Be it Resolved — *a Criticus Classic* — G.B. Tennyson 30

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JANUARY/FEBRUARY 2008 • VOLUME 19 • NUMBER 1 • $4.95

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Do Californians know the Global Warming Solutions Act's full potential price tag? That it won't reduce greenhouse gases? Or that ignorance of this new law could cost us hundreds of billions of dollars?

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An Opening for Common Sense

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The GOP presidential sweepstakes
Frankly, I have no conviction, if that is what you mean. I blow with the wind...

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California Political Review (ISSN 1075-3079) is published bimonthly by the California Public Policy Foundation. Send address changes, manuscripts, and Correspondence to: Editor, California Political Review, Post Office Box 931, Camarillo, CA 93011-0931; or calprev@cppf.us. Correspondence may be condensed due to space limitations. Unsolicited manuscripts should be accompanied by a stamped, self-addressed envelope. Signed articles express their authors' opinions and do not necessarily reflect the views of the California Public Policy Foundation which does not endorse or oppose candidates or intervene in any candidate election campaign. Unsigned editorials express the editors' opinions and not necessarily the views of the California Public Policy Foundation. Rates: $24.95 yearly (six issues). Outside U.S. add $6/year surface, $20 for airmail. California Political Review is copyright © 2007 by the California Public Policy Foundation.

California Political Review (ISSN 1075-3079) is published bimonthly for $24.95 per year by the California Public Policy Foundation, 24005 Ventura Blvd., Calabasas, CA 91302-1447. Periodical Postage Paid at Van Nuys, CA, and additional mailing offices. POSTMASTER: Send address changes to California Political Review, P.O. Box 931, Camarillo, CA 93011-0931.

CORRESPONDENCE

Schwarzenegger's classic revival

I really enjoyed "Arnold Schwarzenegger, Reviving a classic film role," (John Kurzweil, *CPR,* Nov./Dec.) — combining one of my all-time favorite films with what I have long considered an absolutely accurate assessment of our governor: a weather vane with no real convictions of his own, except perhaps for a consistent determination to serve himself. He's done well in movies and, going by reports I have read, in various business ventures, by giving his customers what they wanted.

That works, in a way, in business, but not as head of a Party at odds with another Party that controls the Legislature. Giving the customers whatever they want in that context means first telling Republicans what they wanted to hear (Milton Friedman, Ronald Reagan) as long as they were buying a candidate to replace Gray Davis, then switching to tell Democrats what *they* want to hear when you see they are better able to reward or punish you.

As for journalists like Dan Weintraub, they are part of a profession that long ago forgot all about the romantic ideal of a free press serving the truth. If you want their attention, show them power. Weintraub's column was merely reciting the standard formula: as long as it wins, it is right; if it's a lie that wins today, it is right today; if it is a truth that loses, it is wrong or, more to the point, unimportant, at least until it figures out how to win. In the meantime,they urge everyone to follow the course they are on: attach yourself to whatever seems to be moving, and never mind where it is taking you — just be sure you jump off the minute you see the momentum shift to some new center. Then flock there.

During World War II, Hollywood knew how to answer this sort of thing: with films like *Casablanca,* inspiring us all to grow up and move beyond it.

Richard Sylvester
San Bernardino

Reversing *Kelo*

My thanks to the Howard Jarvis Taxpayers Assoc. ("Imminent peril," Jon Coupal, *CPR,* Nov./Dec.) for its continuing efforts to reverse *Kelo.* Without property rights, there is no law; without law, there is no freedom

Catherine Rodriguez
Studio City

Criswell — still amazing

The Amazing Criswell ("Three Los Angeles Prophets," Charles A. Coulombe, *CPR,* Nov./Dec.) was a man ahead of his time. "Can our whirling, turning, churning earth last out the night?" Indeed! Were he alive and talking that way today, Criswell probably would be nominated for a Nobel Peace Prize, receive it, and be toasted worldwide as sage, seer, and soothsayer extraordinaire.

Come to think of it, I just saw, during the current heavy rainstorm with its high winds, several garbage cans roll across my street, although not, in fairness, "for no apparent reason," so I suppose the corrosion may not yet be so advanced as to spell the end of the Earth. And that's just as well. Nothing fouls up the fun of predicting The End as quickly or thoroughly as real indications that it may actually be here.

John Williams
Chico

CPR

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SACRAMENTO SPECTATOR

The governor's announcement of support for Proposition 93 caught most of Sacramento off-guard, and caused polar opposite reactions in the partisan caucuses here. The GOP members — elected officials and staff of all persuasions from steel-spined conservative to wishy-washy moderate — were appalled. The Democrats were delighted and surprised.

First, the Democrat reaction. They were delighted because the governor still has some good-will left with the electorate — a commodity he may well not have after this year's budget debacle. So he likely gave a boost to what was clearly a failing effort.

But in unguarded moments, Democrat legislators, staff, and their friends among Third House types were positively giddy ... because, one, the governor received absolutely nothing for it which, two, leads them to interpret this as Schwarzenegger's final, ultimate surrender to his ostensible partisan foes.

The weak, unenforceable Democrat promise to support a future Common Cause re-districting measure was minuscule even for a fig-leaf, and transparent to boot. Nobody in Sacramento on any side of this issue believes the Democrats will lift a finger to help the Common Cause measure. So the Democrats scored not only a sizable victory on term-limits but also a Schwarzenegger admission that his Sacramento status is eunuch — a plaything the Dems may use and discard at whim.

Remember that this governor flat-out said, dozens of times, that he would not support modifying term limits without a companion ballot measure to deal with redistricting. The Democrats laughed at him, delivered no redistricting ballot measure, and, in effect, dared him to do anything about it. Even so, this absolute white flag he ran up stunned even long-time Capitol observers.

Now Democrats will do what they would have done anyway: support Schwarzenegger's plan to socialize private insurance in California and raise taxes while doing so. Your *Spectator* cannot remember ever seeing Democrats quite so pleased with themselves — or so contemptuous of a vanquished foe.

Given the above you can understand that the mood among GOP types was sullen, bitter, even morose. GOP legislators in particular believed, at the very least, that the governor's ego and pride would stop him from giving away the store for nothing in return. The consensus here is that his will to fight, against Democrats anyway, is absolutely gone and that he will spend the rest of his term in roll-over mode.

All this presages interesting times in the Tomato for spectating, but bad times for citizens interested in good public policy. Late last year Republican appointees in the governor's administration were warned to expect a "sharp left turn." This is apparently just the beginning. Given this betrayal of his own promises, the reasons for Schwarzenegger remaining a Republican dwindle down to ... well, a handful of dust.

And, in closing, a tid-bit from one of the many fronts in the P.C. wars: *WorldNetDaily* reports that a textbook being used in middle schools defines "jihad" as working to convince others to take up worthy causes, like funding medical research. You know, like that good-will tour at Islam's birth when, all the way from Spain on through Northern Africa and the Middle East to the Asian Pacific, it worked to convince others to take up, well, Islam, or else — just like boy scouts out doing their daily good deeds.

— *A.P.C.*

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The Working Press

Chandleresque quirkiness ... without the liberalism

The L.A. Times' current owner: an eccentric, an iconoclast — but at least he sees throught Hillary!

GEORGE NEUMAYR

IT SOUNDS like real estate magnate Sam Zell, who now owns the *Los Angeles Times,* has all the eccentricity of Otis Chandler without the tiresome liberalism. Zell is apparently a Republican of some sort. "I'm an economic conservative and a social liberal," he told the *New Yorker* last November.

Zell voted for George W. Bush twice, and he told the magazine that among his favorite columnists are Charles Krauthammer and David Brooks. But the "rest of the *New York Times's* columnists are preposterous," he said. He also has no use for Hillary Clinton. "At a recent dinner party, the mention of Hillary Clinton's name prompted him to use a four-letter obscenity to describe her," reported the magazine.

Considered an iconoclast, Zell is known for — among other things — his colorful attire — he has been known to show up at meetings with bankers in a red polyester jumpsuit — and his sartorial musing: "if you dress oddly and you're really good at what you do you're seen as eccentric; but if you're not so good you're seen as a schmuck." A year or so ago he sent a music box as a gift to friends and colleagues that played a song bashing the quasi-socialist Sarbanes-Oxley Act. The song went: "Sarbanes-Oxley/ They've got moxie/ But for businesses/ Their act is toxic/ It's not rocket science/ We're killing profits with compliance."

Asked to address a class at the University of Hawaii a few years ago on business ethics, he exploded at a student for suggesting businessmen had no ethics: "Let me tell you something: I'll put my work schedule against anybody you know, including you, and I work my ass off every day! The idea that somehow or other the business community is full of all these greedy characters — you should see the greed in teachers' unions! You should see the greed in any political organization! Business is made up of a whole group of individuals, and within that group there are straight people, there are not-straight people, and then there's a whole bunch of us in the middle, who some days are straight and some days we're not."

Well, it is good to know Zell deplores "preposterous" journalists. He will have his hands full at the *Times.* In meetings with the paper, he has said that he will not interfere with its editorial policies. But *Slate's* Mickey Kaus suggests that he will break that vow. Kaus reports that Zell considers the paper boring and pretentious. He finds the paper "pretty bland," thinks the business section is lousy, and views the foreign coverage as pointless in what should be an intensely local paper. Perhaps his most revolutionary idea — brace yourselves — is that the paper's editors should take into account the wishes of readers rather than impose on them the news they think Angelenos should hear.

ZELL'S PRIVATE thoughts are bad news for the paper's "entrenched twits," writes Kaus, who notes they "deemed L.A. Mayor Hahn's divorce while he was in office not worth discussing, and reported Lindsay Lohan's arrest, after she mowed down some bushes in Beverly Hills, on page B3." Kaus could also have mentioned the paper's somnolent, PC-inhibited coverage of the Villaraigosa-and-Telemundo scandal last year, which its then-media critic Tim Rutten regarded as unworthy of the paper's magisterial gaze.

Speaking of Rutten, he has left media criticism and moved to the paper's Op-Ed page, where his unreconstructed leftism is now on tap twice a week. Nobody will probably notice the difference; his "media criticism" amounted to bilious left-wing columns anyway. Last November he drew the ire of CNN's Lou Dobbs,

George Neumayr is California Political Review's *press critic.*

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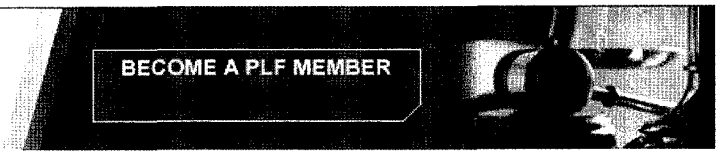

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who called him a left-wing "hack" and partisan activist masquerading as a media critic. Dobbs had suggested that Rutten's "hack liberal" columns explained why the paper "continues to lose readers." (Rutten appeared on Dobbs' radar screen because he had gone after CNN for allegedly overplaying the immigration issue.)

MEANWHILE, THE *Times* Op-Ed page has lost one of its conservative tokens, Matt Welch, a libertarian who served as assistant opinion editor. Welch left last December to assume the editorship of *Reason* magazine. So the page is likely to become even more unreadable this year.

To return to the *New Yorker's* profile of Zell, one disturbing note in it was that leftist Hollywood mogul David Geffen continues to pursue ownership of the paper, hoping to take it off Zell's hands.

Reports the magazine: "David Geffen began courting Zell last April. James Lee, of J. P. Morgan Chase, who represented Zell in the Tribune deal, recalled that, shortly after the company accepted his offer, Zell mentioned that he would be at his home in Malibu for the weekend. Lee immediately thought of Geffen, another client and Malibu resident. 'David had been talking to me constantly about the *L.A. Times,* starting years ago,' Lee said. He suggested that Zell and Geffen, who had never met, have dinner together. 'Anything could happen with these guys. So David went to Sam's place in Malibu, and he had a blast.'"

What would Geffen do with the paper if he got it? Push it even farther to the left by bringing in Maureen Dowd: "Geffen is rumored to have approached the *New York Times* columnist Maureen Dowd, who is a friend of his, about moving to the *L.A. Times* if he acquires it."

According to the *Sacramento Bee,* the broadcast media is suffering an "exodus" of "old school" reporters fed up with its increasingly stupid and vapid news cov-

WHAT YOU HAVEN'T BEEN TOLD ABOUT GUN CONTROL

By SAM PAREDES

"A well regulated Militia being necessary to the security of a free state, the right of the people to keep and bear Arms shall not be infringed."

— U.S. Constitution, Amendment II

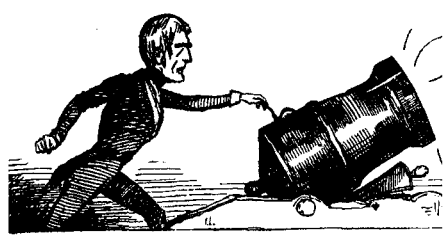
Decades of fevered efforts to confuse the Second Amendment's plain language may end soon when the U.S. Supreme Court rules on *Parker, et al., v. D.C.* The case involves a D.C. Court of Appeals decision that virtually nullified the District's firearms ban, finding that the Second Amendment does, indeed, protect individual firearms possession — a view shared by some of the nation's top constitutional scholars, both liberal and conservative, including Laurence Tribe, Sanford Levinson, Akhil Reed Amar, Alan Dershowitz, and William Van Alstyne.

The Supreme Court *Parker* ruling can go one of three ways.

First (worst case): overturn the D.C. ruling, "interpreting" the Second Amendment in a way that, in effect, ratifies the *status quo,* meaning all existing gun laws are okay;

Second: rule that the Second Amendment protects individual rights but find an "overriding public interest" that allows some restrictions anyway;

Third: rule the Second Amendment actually means what it says. That could well lead to the eventual overturning of many of the 20,000 gun control laws on the nation's books. Of course, misuse of firearms ownership could still have legal consequences.



Anti-gunners are frantic that the court might "discover" an individual right. The Brady Campaign, *e.g.,* says a failure to reverse the D.C. decision would put "sensible gun laws" at risk "... from the long-standing machine gun ban ... to the Brady criminal background check law ... to local and state gun laws like" California's so-called "assault weapons" ban. They have it right. If the court decides in any direction other than overturning the Appellate Court decision, many of California's gun control laws could well be found unconstitutional, including *especially* the phony Assault Weapons Ban. CPR

Sam Paredes is executive director of Gun Owners of California.

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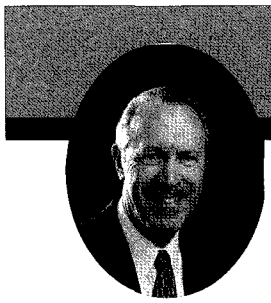
erage. The paper highlighted the plight of one Naj Alikhan, formerly of the state capital TV show "Good Day Sacramento." Alikhan found his service on "Good Day Sacramento" undignified and ridiculous. During one report, while covering a West Nile Virus spraying, he found himself at predawn hours standing in a "rural Yolo County field" while a producer instructed him to slap his neck in the middle of the report. "'C'mon, Naj. Do it. It'll be great. Just slap your neck in the middle of the report. It'll be hilarious,'" the producer said. Alikhan declined.

Alikhan knew he didn't belong at "Good Day Sacramento." For one thing, he wore a coat and tie, which he says made him stand out "like a sore thumb." His assignments included "feeding a bear cub with a baby bottle" which made him a source of derision to his hard-news colleagues back in Charlotte where he once worked at WCNC. "I remember calling some of my colleagues in Charlotte and saying, 'Please, for the love of God, do not let any of the hard-news people see that (bear cub) clip online,'" Alikhan said to the *Bee*. "One friend e-mailed me back and said that everybody in the (Charlotte) newsroom was called over to see it."

Not that Alikhan didn't occasionally make a good-faith effort to contribute to "Good Day Sacramento"'s notion of news. He once volunteered a report on a "pumpkin pie shortage in Sacramento." But it wasn't enough. He didn't get his contract renewed and now works in the press office of the Service Employees International Union. CPR



The Law

The public nuisance is in the A.G.'s office

Jerry Brown soldiers on, pursuing Lockyer's wasteful, pointless anti-auto-maker lawsuit.

M. DAVID STIRLING *AND* TIMOTHY SANDEFUR

ONE YEAR ago, we urged newly-elected Attorney General Jerry Brown to drop a frivolous lawsuit his predecessor, Bill Lockyer, had filed in federal court a few months earlier. The suit targets the six major automobile manufacturers, alleging that the CO^2 emissions of the vehicles they produce constitute a "public nuisance," and it seeks untold millions of dollars in damages from the manufacturers which would go into the coffers of the state — supposedly to combat global warming. As a practical matter, the lawsuit could not possibly accomplish anything for the environment: California's automobiles have a negligible effect on earth's atmosphere, compared to, say, the new fossil-fuel burning power plants that China is constructing at the rate of one per week. Even if every car in California were to disappear tomorrow, the effect on global temperature would be negligible.

Along with its letter to Attorney General Brown, PLF also submitted a brief in the case of *Lockyer v. General Motors et al,* urging the court to dismiss the complaint. But rather than drop this wasteful, pointless lawsuit, Attorney General Brown took it over, put his name on it, and pursued it with an activist fervor equal to that shown by Elliott Spitzer when he was attorney general of New York (Spitzer is now New York's governor).

Several flaws make this lawsuit frivolous. One is that the activities of the automakers, which the lawsuit calls a "public nuisance," were legal and reasonable, and were engaged in at the express invitation of the state of California. Producing automobiles, especially newer automobiles, is not bad for California's citizens. Cars are an essential part of everyday life: schools, grocery stores, and trash haulers depend on cars, as does virtually every other institution we take for granted in modern society.

M. David Stirling and Timothy Sandefur are attorneys at the Pacific Legal Foundation. They wrote a friend of the court brief urging the trial court to dismiss the lawsuit against the car makers, and will do so again in the Ninth Circuit Court of Appeal.

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Indeed, the state of California itself — the very entity Brown represents — operates a fleet of 37,000 vehicles, including fire trucks, ambulances, tow trucks, police cars, and the cars that Attorney General Brown himself uses. And although they have some negative side effects such as accidents, congestion, and pollution, in the normal trade-offs of everyday life, the positives outweigh the negatives. We simply could not exist without them. To call them a "nuisance" is patently absurd.

PERHAPS EVEN worse, Brown's lawsuit relies upon a legal theory of "public nuisance" so vague and imprecise that no one who might be charged under it can know beforehand what conduct it prohibits. Virtually no one — not lawyers, not judges, not law professors — can actually define the term "public nuisance." Legal experts have called the theory a "legal garbage can" full of "vagueness, uncertainty and confusion," a "mongrel" doctrine "intractable to definition," a "mystery," and a "wilderness of law." And as America's founders warned us long ago, vague law is the most dangerous sort of oppression because it allows rulers to punish anything, at any time, simply by redefining the ambiguous words in the law.

A third reason the pending lawsuit is frivolous is that California courts have already rejected attempts by opportunistic plaintiffs to exploit the vagueness of "public nuisance" to punish innocent, reasonable, or socially-acceptable behavior. In 1971, in a case quite similar to this one, the California Court of Appeal threw out a lawsuit by an environmental activist who sued car makers for causing air pollution. In dismissing the case, the appellate court stated: "Plaintiff is simply asking the court to do what the elected representatives of the people have not done: adopt stricter standards over the discharge of air contaminants ...."

TIMOTHY SANDEFUR

Just three years ago, in rejecting a public nuisance suit against gun manufacturers, the Court of Appeal warned that if "public nuisance" were broadened, as Attorney General Brown seeks to do in the present case, "[a]ny manufacturer of an arguably dangerous product that finds its way into California can be hauled into court ... The manufacturer's liability will not turn on whether the product was defective, but whether its legal marketing and distribution system somehow promoted the use of its product by criminal and underage end users." If Brown prevails in his lawsuit, any politi-

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cally unpopular business could be targeted for a public nuisance lawsuit whenever politicians want to argue that their legal products have deleterious social effects. These lawsuits, of course, generate giant payoffs to state government, creating an incentive for Sacramento's big-spenders to supplement the state's income and perpetuate the machinery of big government. Meanwhile, the possibility of such lawsuits will deter investment and innovation and stifle the economy of a state that is already billions of dollars in debt.

YET, THERE is one even bigger reason that this case is frivolous and should be dismissed. *Brown v. General Motors et al* implicates uniquely serious questions: Are CO^2 emissions from automobiles and other man-enabled activities responsible for global warming, and if so, what can or should humans do to combat it? What is the proper way to balance concerns for the global environment with humanity's needs for productivity, housing, employment, transportation, health, education, and public safety? These and other hard questions are serious matters of policy that require the sort of political judgment, tradeoffs, and consensus-building best left to the policy-making branches of government. The U.S. Constitution delegates such matters to Congress, not the judicial branch, because the unelected federal judiciary is simply not equipped to address them.

The state's attorney general should be an outspoken opponent of frivolous lawsuits, not a leading proponent of them. Yet Jerry Brown brought his case against the automakers on for hearing before the trial court. Then, although that court dismissed the case using the same basic reasoning PLF had urged that both the attorney general and the court consider, Brown has filed an appeal. The case now sits before the federal Ninth Circuit Court of Appeals. Once again, PLF will be opposing the AG in court.

If Brown prevails, any politically unpopular business could be targeted for a public nuisance lawsuit whenever politicians want to argue that their legal products have deleterious social effects.

Exploiting the legal system in this way could not possibly benefit the environment. But it could have catastrophic effects on the economy and general welfare of California — and that of the entire country. It's time for Jerry Brown to act responsibly and drop this wasteful grandstanding. CPR

The Good Guys

What would Jesus do?

In this election, voters are choosing a president, not a pastor.

MICHAEL S. FREDENBURG

CHRISTIANS, THROUGH the centuries, have asked themselves this question when seeking to do the right thing, and today many are asking it with regard to the presidential race — a race in which major Christian figures have taken active roles. For instance: Pat Robertson endorsed Rudi Giuliani — would Jesus have done that? James Dobson, questioning Senator Fred Thompson's faith, effectively told the evangelical community not to support Thompson's candidacy — and one assumes

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that, at a minimum, Dr. Dobson believes Jesus would not object to what he did. Then there is the hot question of Mitt Romney and whether or not it is right for Christians to vote for a Mormon. Finally, Christian evangelicals are flocking to Governor Mike Huckabee as the one, true, viable Christian in the race — would Jesus do that?

THIS QUESTION comes with certain limitations, to be sure. Slightly rephrasing it, the question becomes: what would God do or say about the presidential race? The answer, of course, is that we do not know. After all, if we adhere to any kind of Christian orthodoxy, we understand that we're talking about knowing the mind of God, something simply beyond our capability. Further, good reason exists to question whether Jesus would actively support *any* political candidate.

However, while we cannot presume to be specific about what Jesus would do, we can look at the Bible, at what God has done in the past. Further, we can consider general principles and values in the Bible and apply these as followers of Christ to help decide who to support.

For instance: has God blessed believers who have supported leaders who are non-Christians/non-Jews? Yes. According to the books of Ezra and Nehemiah, God worked through a long line of Persian Kings who were sympathetic to the Jewish people's desire to rebuild the Temple in Jerusalem. God used these non-Jewish kings to advance His kingdom and the cause of his people. That is, God blessed his people even as they "collaborated" with non-Jewish leaders to advance the cause. The case can therefore be made that it is fine for God's people to work with and support someone who is not a Christian.

Is this example precisely analogous to voting for a non-Christian in a democracy where "We the People" are supposed to be the government? The answer to that would be no, but if you are personally struggling with these questions, ask yourself if you would rather vote for a pro-abortion, pro-big government, weak on defense, "born again Christian" — *i.e.,* Jimmy Carter — or for a pro-life, pro-traditional family, small government, strong defense Mormon. For the record, I'd vote for neither — to be the Pastor of my church. But in a civic election, I would vote for the viable candidate who most closely reflects my public policy values.

Specifically regarding Mitt Romney, he is certainly espousing views reflecting traditional Judeo-Christian values and positions Christians can whole-heartedly support. But how firmly can we rely on Governor Romney to follow through on his words if he is elected president? His many recent changes of heart on abortion, homosexuals serving openly in the military, gun rights, taxation, illegal immigration, and other issues seem to warrant a healthy skepticism. Nonetheless, Governor Romney is now saying the right things, publicly committing himself to these positions. That means — should he be nominated — he would, from a Christian perspective, be head and shoulders above any potential Democrat nominee, even Hillary Clinton (who claims to be Christian).

CHRISTIAN *ENOUGH?* Fred Thompson's campaign was severely damaged when one of the nation's two most respected evangelical leaders, James Dobson (the other being Billy Graham), asked publicly: is Fred Thompson really a

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Christian? It was an injudicious question and should not have been posed publicly, especially by Dr. Dobson who had never met Senator Thompson. Still, the question was posed and the damage done, effectively sending a message to pro-family groups that supporting Fred Thompson could bring potentially negative fallout, despite Senator Thompson's long-standing voting record on the right side of issues of concern to Christian voters.

BUT *IS* Fred Thompson Christian enough? Senator Thompson has publicly admitted he does not make it to church every week and is divorced and re-married. Should Christian leaders disqualify him on that basis? Clearly, no. Attending Church every week is a great tradition and a potentially wonderful discipline, but a lot of Christians do not believe it is mandated by the Bible. And of course, divorce does not eliminate a man from the ranks of Christianity. After all, President Ronald Reagan did not attend church every week and was also divorced and remarried, yet no serious Christian evangelical leader today questions Reagan's faith or fitness to lead our nation. Since Fred Thompson has declared himself to be a follower of Christ and since he espouses Judeo-Christian values (and has a voting record reflecting them), I think only one person is in a position to question his faith — Christ Himself — and He has, to my knowledge, remained silent on the topic.

In contrast to Thompson and Romney, Arkansas Governor Mike Huckabee has clearly benefited from evangelical Christian support. His recent surge in the polls, and especially his Iowa caucuses victory, largely resulted from his having convinced the Christian community of his Christian *bona fides.* In addition, unlike most of the other candidates, Huckabee is not only fluent in *evangelese,* but has been comfortable using it in public. He has down pat the Christian jargon evangelicals are used to hearing at church and among their social cliques. Several other candidates clearly possess solid Christian credentials that even Dr. Dobson would not question (including Congressmen Duncan Hunter and Tom Tancredo). But none have clicked with the evangelical community like Huckabee.

Is it legitimate for Christians to flock to Mike Huckabee merely because he is one of them? To some degree, sure. We are all more comfortable with people who seem to be like us. But in choosing a president, it is incumbent for all voters, even Christians, to know more than that a candidate can talk their language. Overall, Huckabee's record is not that of a conservative. Yes he is strong on the life issue and what constitutes genuine marriage. But his record on taxes, illegal immigration, federalism, and U.S. foreign policy is clearly not conservative.

Would you rather vote for a pro-abortion, pro-big government, weak on defense, 'born again Christian' — i.e., Jimmy Carter — or a pro-life, pro-traditional family, small government, strong defense Mormon?

If you believe big government leads eventually to liberal social policy and that liberal social policy eventually leads to big government, then Governor Huckabee, despite his Christian credentials, is not your candidate. Yes, it is possible to be a good person, a Christian, and still be wrong about certain public policy issues. Christians should evaluate the public policy record of *all* the candidates, and vote accordingly.

Finally, what would Jesus think of Pat Robertson's endorsement of Rudy Giuliani? Since we do not know God's mind, we can't know what Jesus would say or even whether or not He would say anything at all. But we do know that Giuliani is on the wrong side of major issues having a big impact on women, children, the integrity of the family, and the overall health of society. His positions are unequivocally and radically opposed to Christian teachings on family and social justice. That makes the endorsement by Robertson, as a major evangelical leader, and his claim that Giuliani is an acceptable candidate for Christians, a head-scratcher. Frankly, this endorsement appears unwise and downright foolish, especially with so many other candidates now publicly on the Christian side of these critical issues.

Bottom line is that we are not God and do not have the information and wisdom God draws upon to make decisions. Perhaps Jesus would endorse Rudy Giuliani — if He knew the former New York mayor would, in the near future, undergo a sincere change of heart on critical issues. We, however, are not privy to such information. Ask God for wisdom and guidance, by all means, but also use the brain He gave you to evaluate the candidates' records, listen to what they say, and make the decision accordingly. CPR

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Mr. Speaker's empty gesture

Certificate of Ownership
CALIFORNIA REGISTERED
VAN ECK FOREST
CARBON DIOXIDE EMISSIONS REDUCTIONS
This Certifies That The Honorable Chuck DeVore
12th December

by Chuck DeVore

One nuclear reactor saves about $1 billion of natural gas fossil fuel every year. So why is supposed carbon-foe Fabian Nunez handing out meaningless CO^2 'Emission Reduction' certificates while doing nothing to promote nukes?

Thanks for the gift of carbon, Mr. Speaker. Or, should I say, the gift of "non-carbon" — a sort of anti-coal for the Christmas stocking. At the close of the year, Speaker Fabian Núñez presented to every legislator a certificate of ownership for three metric tons of "California Registered Van Eck Forest Carbon Dioxide Emissions Reductions." Now, I'm not one to look a

A portion of the Fred van Eck estate given to Purdue University

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gift horse in the mouth, but, this being politics, where do I begin? The Carbon Dioxide Emissions certificate is 2008's equivalent of an environmental pet rock. At best, it gives a whimsical warm and fuzzy feeling; at worst, it just sits there.

First, Mr. Núñez said the value of his gift was $48 for reporting purposes, or $16 per metric ton. But carbon dioxide (CO^2) credits are selling for about $2.10 a metric ton on the Chicago Climate Exchange (CCX) (yes, there is such a thing, see: *http://www.chicagoclimatex.com/market/data/daily.jsf* — like London bookies, commodities traders will make money off of anything). So my three metric tons of emissions reductions are worth about $6.30 on the open market. A free market cost of $2.10 per metric ton makes Mr. Núñez's $16 per metric ton represent a gross profit of almost 87 percent — enough to make even a jaded Enron accountant blush. It is either that or the Van Eck Forest has heavier overhead than even the most inefficient long-running government bureaucracy.

Switching to environment mode, and putting the matter into "global" perspective, the average person exhales about 0.9 kilograms of CO^2 daily. On that basis the Van Eck certificate will take care of my body's carbon footprint for about nine years. But is this a good use of money, a scarce asset? Might there be better, more efficient ways of reducing CO^2 emissions?

First, a bit about the Van Eck Forest. Situated on 2,200 acres in Humboldt County, the Van Eck Forest used to be owned by a wealthy Easterner (who ceased exhaling CO^2 in 2000). Mr. van Eck willed his land to Purdue University along with a $21 million endowment and a stipulation that the forest remain a working forest, albeit a forest to be logged with sustainable techniques rather than clear-cutting. Now managed by the Pacific Forest Trust, the Van Eck acreage was previously managed by forester Jim Able. Given that the "new" techniques employed under the Trust are the same as those he employed, Mr. Able doubts that PFT's logging practices will impound an added 500,000 tons of CO^2 over 100 years while also producing 170 million board feet of lumber.

So what does the 21st Century's answer to the 16th Century practice of selling indulgences for sins actually do? According to a July 2007 article in *Salon* magazine (see: *http://www.salon.com/news/feature/2007/07/02/carbon_credits/index1.html)* the Van Eck Forest was already funded and on track to be preserved with a permanent conservation easement in 2001. That makes any additional money from environmental sinners with a guilty conscience icing on the cake. The Pacific Forest Trust will simply take people's money and spend it on stuff, like new forestry research buildings for Purdue University — or on influencing politics in California. PG&E, by the way, the giant Northern California public utility, is offering its ratepayers the opportunity to pay $4 to $5 a month for its so-called "Climate Smart" program. Among other things, Climate Smart money goes to buy CO^2 emissions reductions from ... guess who? Yes: the Pacific Forest Trust, funds that also go to Purdue University or to buying political influence.

University, van Eck estate officials before 30-year-old Douglas fir trees.

Even Governor Schwarzenegger has gotten in on the act, buying Pacific Forest Trust indulgences for the manifold environmental "sin" of flying a private jet. These indulgences also come in the form of PFT CO^2 emissions reductions (see: *http://*

Chuck DeVore (R-Irvine) represents California's 70th state Assembly District. He authored The California Energy Independence and Zero Carbon Dioxide Emission Electrical Generation Act of 2008.

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www.pacificforest.org/news/Governor-ER-Purchase.html). But, as we know, the Van Eck Forest is doing what they were already set to do in 2001, which means there is no CO^2 reduction at all. It all begins to look like a very costly scam where well-meaning people and high-CO^2-emitting "sinners" alike pay Pacific Forest Trust for a nice certificate which results in the Trust's management doing nothing at all for the environment.

And to what use *is* that money put? As I mentioned, the Pacific Forest Trust has played in the big leagues of California politics. Listed as a "major donor" on the Secretary of State's political reform website, the Pacific Forest Trust gave $50,000 in 2005 to put Proposition 84 on the ballot in 2006. Proposition 84's purpose was to buy park land and fund environmental projects and studies. It added another $5.4 billion in debt to California's maxed out credit card. It will cost the taxpayers $10.5 billion in principle and interest payments over 30 years.

Not surprisingly, Laurie A. Wayburn, president of The Pacific Forest Trust, Inc., is a Democrat activist, giving generously to Senator John Kerry's 2004 presidential bid, Senator Barbara Boxer's 2004 re-election, and to Al Gore's 2000 presidential effort, as well as to Speaker Nancy Pelosi's PAC.

All of which brings us back to the original intent of Speaker Núñez' CO^2 reduction gesture ... If the Speaker wanted to make a real impact on CO^2 emissions, he could have given out fractional shares of stock in AREVA, the French nuclear reactor builder. Each AREVA 1,600 megawatt (MW) nuclear reactor saves about $1 billion of natural gas fossil fuel every year. Since California burns natural gas for 42 percent of its electricity, this would reduce total lifecycle CO^2 emissions by 6.8 *million* metric tons per year.

Pacific Forest Trust gave $50,000 in 2005 to put Proposition 84 on the ballot in 2006. The purpose of Prop. 84 was to buy park land and fund environmental projects and studies.

Summing up: on one hand we have the Van Eck Forest, which is unlikely to impound its claimed additional 500,000 metric tons of CO^2 over 100 years. Further, the dollars added into The Pacific Forest Trust will do nothing to change CO^2 emissions because the Van Eck Forest's management practices were decided in 2001 when Mr. van Eck's will was put into effect. On the other hand, nuclear power is a proven method of reducing CO^2 emissions. Building one new 1,600 MW nuclear reactor in California would save more than 680 *million* metric tons of CO^2 emissions over 100 years (new reactors are expected to last that long). That's more than 1,280 *times* as much CO^2 kept from the atmosphere as the amount of reductions *claimed* from 2,200 acres of forest. CPR

A forester employing the sustainable logging techniques Mr. van Eck specified in his will.

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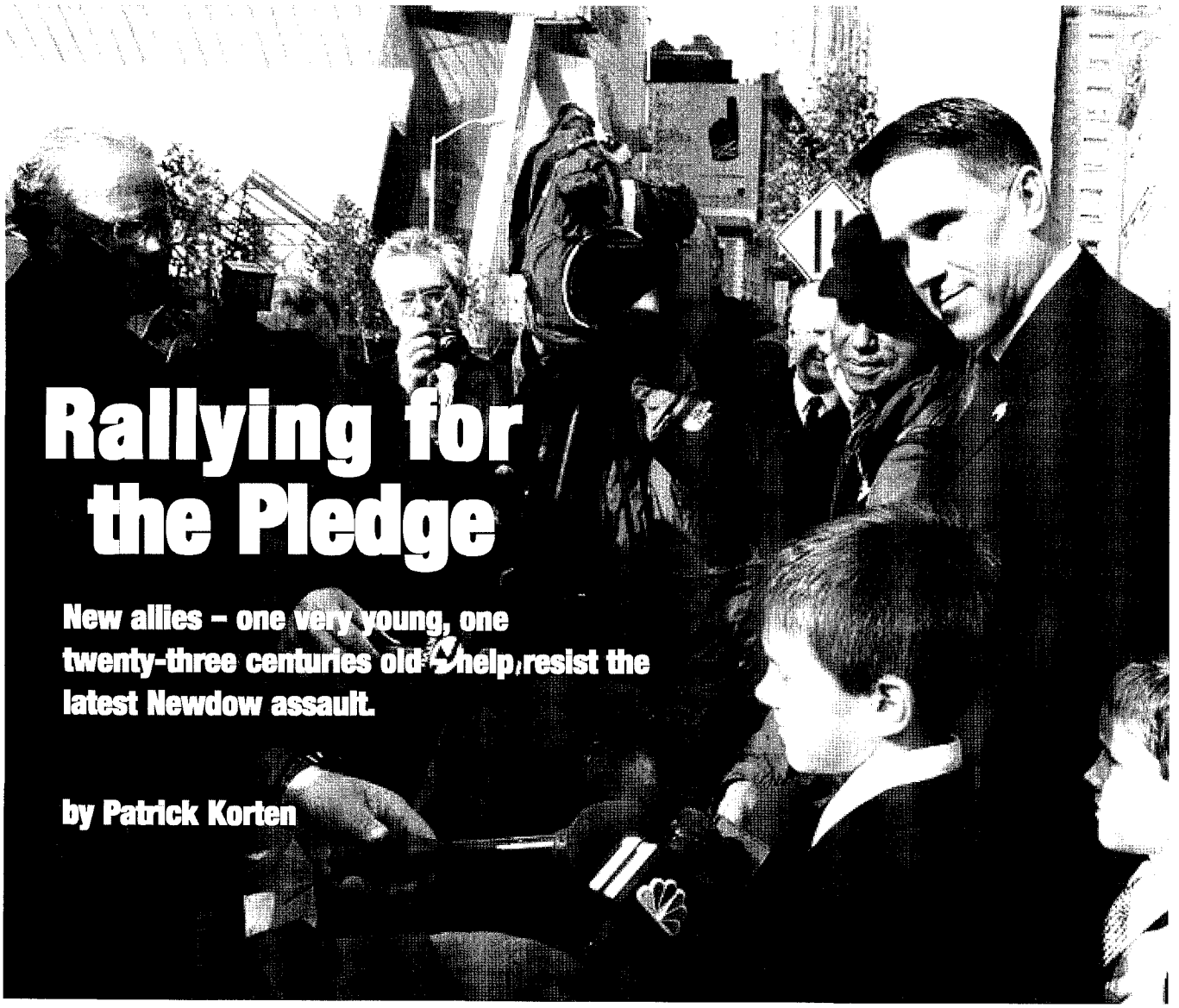

Rallying for the Pledge

New allies – one very young, one twenty-three centuries old – help resist the latest Newdow assault.

by Patrick Korten

BRENDEN CAREY MEETS THE PRESS.

In a remarkable coincidence, Aristotle, the ancient Greek philosopher — twenty-three hundred years after his death — may wind up at the center of two separate events, both very important, occurring at about the same time: an historic meeting between Pope Benedict and a group of Muslim scholars in Rome and a decision handed down by the U.S. Ninth Circuit Court of Appeals in San Francisco.

The Rome meeting will search for common ground between Christianity and Islam, and on the surface there is precious little com-

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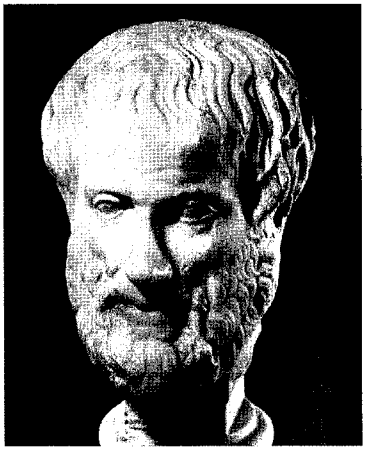
mon ground to be had. But during what is often referred to as Islam's "Golden Age" of intellectual and scientific accomplishment, Muslim philosophers studied Aristotle and wrote learned commentaries about his thought. Two of the most famous philosophers in Islam's history, known in the West as Averroes (Abul Walid Muhammad Ibn Ahmad Ibn Rushd) and Avicenna (Abu Ali al-Husayn ibn Abd Allah ibn Sina), drew heavily from Aristotle in their work, and in turn influenced the work of Christian theologians and philosophers, especially Thomas Aquinas. The Pope hopes that his dialogue with the Muslim scholars can draw on that common heritage.

And, perhaps even more remarkably, Aristotle may well turn out to transform the way American courts view the words "under God" in the Pledge of Allegiance and other similar references in America's foundational documents and philosophy of government. Oral argument before a Ninth Circuit panel December 4 — in *Newdow vs. Carey* (doctor/lawyer/atheist/non-custodial parent Michael Newdow's latest assault on references to "God" on the nation's currency and in the Pledge of Allegiance) — raised and considered in some detail a genuinely new issue in these types of First Amendment cases: the question of Aristotle's "god of the philosophers" — the Supreme Cause or Unmoved Mover that Aristotle postulated. Not that the justices engaged in philosophical speculation about Aristotle's ideas; rather, they considered the point that here is a God not dependent upon or growing out of any specific religion — certainly not Christianity, Judaism, or Islam (although Aristotle has influenced all three) — but from philosophy: the "philosophers' God," and that *this* God is referred to in the American Declaration of Independence, Pledge, and dozens of other references. That discussion before the Ninth Circuit panel holds enormous potential for advancing the national debate on the First Amendment.



ARISTOTLE

RIGHT AT HOME

The December hearing, however, as it began, showed little promise of providing anything new. Actually, although Groundhog Day was still two months away, Bill Murray would have felt right at home. Judge Stephen Reinhardt was in his customary spot, presiding over yet another examination of the First Amendment's religion clauses' meaning. And Newdow was in *his* customary spot, at the plaintiff's table, preparing once again to serve as his own lawyer in a pair of cases seeking to remove references to "God" from the nation's currency and from the Pledge of Allegiance.

The courtroom was filled with Newdow groupies, and while we waited for the hearing to begin, several of them engaged in a spirited discussion of the Scopes *monkey trial.*

Newdow may or may not have a fool for a client, but he gives no impression of being concerned about the matter. He is a dour, intense, and relentless man, robbed of a clear decision on the Pledge when the Supreme Court ruled in 2004 that he lacked standing to bring his original case, now back with a co-plaintiff whose custody of "Roe child two" is unquestioned, and determined to get a decision on the merits this time around.

The courtroom was filled with Newdow groupies, and while we waited for the hearing to begin, several of them engaged in a spirited discussion of the *Scopes* monkey trial. For them, the latest cases are nothing more than a replay of the Clarence Darrow-William Jennings Bryan courtroom debate over the teaching of evolution back in 1925, and pledging allegiance to "one nation under God" is no more rational than a law prohibiting

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the teaching of evolution (the issue in *Scopes).* It would shortly become apparent that Judge Reinhardt was inclined to see things in much the same way.

The opening hour was given over to a discussion of Newdow's challenge to putting the words "In God We Trust" on the nation's currency. His argument that it was simply intolerable to be forced, as an atheist, to use money proclaiming trust in God every time he paid for something was unenthusiastically received by the court. (One waited in vain for a suggestion that in the modern age, he could simply use a debit card emblazoned with "Bank of America" rather than "In God We Trust.")

Then it was on to the main event, *Newdow vs. Carey.* It is, by the way, the case caption, or title, that first indicates something different about this latest Pledge challenge. John Carey is a Knight of Columbus whose children attend school in Elk Grove, just outside Sacramento (The caption of the earlier case was *Elk Grove Unified School District v. Newdow).* John and Adrienne Carey and their son Brenden (a handsome family, watching intently this morning from the front seats) are among seven families of Knights who entered the case as "defendant interveners" shortly after Newdow filed his renewed challenge to the Pledge in January 2005. They and the Supreme Council of the Knights of Columbus are represented by The Becket Fund for Religious Liberty, a public interest law firm based in Washington, D.C., known for its skillful handling of complex First Amendment religion clause cases (full disclosure: I served formerly as the Fund's vice president for communications).

The Becket Fund asked the district court to allow the Knights to intervene because the Order had led the campaign in the early 1950s to add the words "under God" to the Pledge.* Judge Lawrence Karlton granted the Becket Fund motion to intervene, and captioning conventions being what they are ("Carey" comes before "Elk" alphabetically); the case became *Newdow v. Carey.* And it is the Knights' intervention that set the stage for what may turn out to be the most consequential new twist in the case, potentially changing the way the courts interpret the meaning of the word "God" in this setting.

AVICENNA

Five and a half years ago, when it ruled on the first Newdow case, the Ninth Circuit held that in the context of the Pledge, "under God" was "a profession of a religious ... belief in monotheism" that was "identical, for Establishment Clause purposes, to a profession that we are a nation 'under Jesus,' a nation 'under Vishnu,' [or] a nation 'under Zeus'." (Judge Reinhardt was on that panel, too, but did not write the decision.) Put another way, the 2002 court said that to recite the words "under God" is to make a *theological* statement. And the latest panel was headed in the same direction, until Becket Fund President Kevin Hasson (whose degrees at Notre Dame include philosophy as well as law) took his turn at the podium and begged to differ.

AN 'UNKNOWABLE ESSENCE'

"At the time of the republic, before and after the revolution, one of the consuming questions was how we would secure our individual rights," Hasson began. "And the solution people came to was to embrace a natural rights theory ... based on a god that was the source of those rights. But it wasn't the Christian god. And it wasn't the Jewish god, and it wasn't the Muslim god. It was the *philosopher's* god ... precisely because an argument from religion alone would never do. The colonists

* Of the 17 congressional sponsors of resolutions to modify the Pledge in 1954, nine were Catholics and eight of the nine were Knights. The ninth, Louis Rabaut of New York, joined the organization the following year. They included liberal Democrats like Peter Rodino of New Jersey and Republicans like New York's William Miller, who would later be Barry Goldwater's running mate in 1964.

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had seen that fail many times over: Rhode Island and Pennsylvania both failed to establish religious liberty based on a religious proposition. Because that had failed, they needed to base this philosophical argument on the philosopher's god, who could be known by reason alone."

SAINT THOMAS AQUINAS

Judge Dorothy Nelson quickly agreed. "Right, he was described as an 'unknowable essence' by some," she interjected.

Judge Reinhardt, suddenly intrigued, decided to joust a little bit.

"And is that a religious god, or a non-religious god?"

"The philosopher's god is not a religious figure for the purposes of the Establishment Clause," Hasson returned. To say that all men are endowed by their Creator with certain unalienable rights "was not just a throwaway line in the Declaration of Independence," he continued. "In May of 1776, Madison was writing the equivalent of the Bill of Rights for Virginia using natural rights theory based on the philosopher's god. Along came Jefferson, with his Declaration of Independence, doing exactly the same thing. It's not the Christian god, because this god is known philosophically. It's self-evident that we are endowed by our Creator. The argument that it's self-evident is not an appeal to scripture, or an appeal to religious authority. It's an appeal to reason."

Hasson and the Knights had made a version of the argument years earlier, in an *amicus* brief filed with the Supreme Court during the battle over the first Newdow challenge. They'd made it in the briefs filed in this case as well. But there's no substitute for being able to make the argument in person, in front of the circuit panel, looking them straight in the eye. It is nearly impossible for the judges to read all of the thousands of pages of briefs sent their way. But they must grapple with the arguments presented to them in person. Judge Reinhardt was now grappling, and the *Scopes* line of inquiry now made an appearance.

"If the world just evolved naturally and we came from fish or whatever to human beings, and it just happened through the forces of science, is that a god?"

Hasson was ready. "There are philosophers who would say that there is a causal principle behind that, and the philosopher's god would be alive and well and living in evolution."

Judge Nelson chimed in again: "You give that the name god, or Mr. X, or the creative force, or whatever ..."

Judge Reinhardt was now really intrigued. "That includes straight natural sciences, planets that were up, exploded, gasses came, the earth evolved from all those gasses, and then we went through generations of various animal species, ended up with man, those forces — natural forces — of gas, explosions, all that — that is god?"

"Your honor," Hasson replied, "however any individual believer in the philosopher's god wants to conceive of that argument, the fact remains that the philosopher's god was the god they were referring to. That's why you never see things referring to Jesus, or to Krishna, or whatever."

Reinhardt, who'd allowed the discussion to continue beyond the allotted time, finally brought it to an end. "Well, we could go on all day. This is very interesting."

THE 'BINDING PRECEDENT' ISSUE

It would be foolhardy to read too much into the exchange — so much of the work that appeals courts do is mind-numbingly dull and/or technical — and it's common for judges to delight in the rare moments when the job is just plain fun. This was certainly one of those moments.

In the Pledge case, it's also true that a pivotal threshold question is whether the 2002 Ninth Circuit decision carries any weight as a precedent since it was reversed by the U.S. Supreme Court on the narrow grounds of standing. Judge Karlton, the district judge in the current Newdow case, *did* consider it binding precedent and found the words "under God" unconstitutional on that

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basis alone. Much of the oral argument offered by the lawyers for the United States and the school district focused exclusively on that issue. If the Ninth Circuit panel decides that its previous decision *is* binding precedent, it will uphold Judge Karlton on that basis and won't reach the First Amendment argument at all. Of course, that would not preclude another appeal to the U.S. Supreme Court — again, on the precedent issue.

But it's also possible that the panel will ignore the earlier decision and accept the argument that "under God" in the Pledge is a philosophical, not theological, reference and that its adoption at the height of the Cold War in 1954 was simply an affirmation that in America, we believe that, because they come from our "Creator," fundamental rights are not the government's to give or take away. Here, it's government's job to "secure" — to protect — those rights. The Soviets, of course, saw it the other way around.

Rhode Island and Pennsylvania failed to establish religious liberty based on a religious proposition. The colonists needed to base this philosophical argument on the philosopher's god, who could be known by reason alone.

Newdow was not merely ineffective in dealing with Hasson's argument, he was reckless. He tried to kiss it off in a few seconds, telling the court that "concepts concerning god or a supreme being of some sort are manifestly religious," and "do not shed that religiosity merely because they are presented as a philosophy or as a science." It might have worked, if he hadn't added, "that's from *Edwards v. Aguilard,* Justice Powell concurring."

Unfortunately for Newdow, such a statement is nowhere to be found in Powell's concurrence in the 1987 decision. In fact, quite the reverse: "I would see no constitutional problem," Powell wrote, "if schoolchildren were taught the nature of the Founding Father's religious beliefs and how those beliefs affected the attitudes of the times and the structure of our government."

A few minutes later, his luck ran out. "Mr. Newdow," Judge Reinhardt said, "give the names of cases again where it said that the argument by your opponent about the philosophical god is not correct."

"Sorry? Say that one more time?" (That's what you say when you don't have a ready answer and need a moment to think.)

"That god means religion and not a philosophical concept."

"I think that everyone interprets 'god' as meaning god ..."

"No, but you said that there were cases in which they said it's not a scientific or philosophical ..."

"In the Supreme Court?"

"Yes."

"If he said that, I missed it and I'm sorry ... and I don't know of any." (If *he* said that? No, no, Michael. *You* said that.)

DOWNWARD SPIRAL

Pretending to misunderstand Reinhardt's questions after getting caught in a lie was the beginning of a long downward spiral. Some people, it seems, can be both smart and stupid at the same time. Newdow is unquestionably smart — no one earns degrees in both medicine and law without being smart — but it has made him arrogant, and that sometimes impairs his judgment. Moreover, Newdow had no excuse for being unprepared to deal with Hasson's argument. The two have debated it publicly in several forums.

Perhaps shaken by getting caught, Newdow's arrogance flared again when he dissed Sandra Day O'Connor during a discussion of whether the Pledge meets the Supreme Court's endorsement test. Judge Carlos Bea pointed out that O'Connor, in a concurrence in the first Newdow case, "said that the Pledge is ceremonial deism and is not an endorsement of religion."

"She was alone in that position," Newdow replied, "and I'll mention that she's no longer on the court, and I'll mention that it contradicts everything that she said before that." All true, and all stated in such a way as to make any ex-

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JOHN AND ADIRENNE CAREY FLANK BECKET FUND PRESIDENT KEVIN HASSON AND BRENDEN AND SPENCER CAREY OUTSIDE THE SAN FRANCISCO FEDERAL COURTHOUSE.

perienced appellate attorney cringe. After several more minutes of harsh attacks on O'Connor, Newdow turned venomous in a discussion with Judge Bea of "ceremonial deism," treating Bea as if he were a second-rate student who just didn't understand. Finally, Judge Nelson asked, "You mentioned that Justice O'Connor was no longer on the court — nor is Justice Brennan or Black. Does that mean that we can ignore what they say?"

No, Newdow replied, but "if this case got back to the Supreme Court, you might not be upheld, since there was no one else in concurrence with her."

"If I were you, I wouldn't try to count up the votes," Judge Reinhardt cautioned. A smart attorney would have bitten his tongue at that point, but not Newdow. "I'm not convinced, your honor. You know, they've never been briefed." But of course they have been briefed, by Newdow himself, in 2004. If the case does go on to the Supreme Court, the presence of Justice Scalia on the bench will be important. Scalia did not sit on the case in 2004 because in a January 2003 speech at a Religious Freedom Day event sponsored by — ironically — the Knights of Columbus, Scalia publicly said that the Ninth Circuit decision declaring the Pledge unconstitutional was based on a flawed reading of the First Amendment. Once the Court granted *certiorari,* Newdow filed a "suggestion for recusal," and without comment, Scalia declined to participate in the case.

'NO BASIS IN LAW OR REASON'

Without Scalia, the 2004 court simply punted the constitutionality question in favor of the simpler decision regarding Newdow's eligibility to sue in the first place. There were several ironies in the earlier case. Justices Thomas and O'Connor and Chief Justice Rehnquist argued that Newdow *did* have standing. This time, Newdow found himself citing Thomas, who wrote separately in 2004 to declare that, "as a matter of our precedent, the Pledge policy is unconstitutional." Of course, Thomas also declared that the precedent had "no basis in law or reason," and added that he "would take this opportunity to begin the process of rethinking the Establishment Clause."

There is no doubt that such a rethinking is in order. The Newdows of the world will be back again and again if the court fails to provide a clear enunciation of American religious liberty. Even many who favor a strict separationist reading of the religion clauses acknowledge that the Court has made a terrible hash of First Amendment jurisprudence in the area since 1947's *Everson v. Board of Education.* But it's highly doubtful that there are five votes on the court for starting over.

The court could bundle the Pledge with things relegated to the category of "ceremonial deism," denatured and stripped of religious significance. But if we are to retain any sense of the way in which the Founders skillfully blended their undoubted faith and their blueprint for a society based on rights bestowed by "Nature's God," the "philosopher's god" probably affords the best opportunity. It would provide the courts with a solid rationale for rejecting the wholesale banishment of the mention of "God" that Michael Newdow so desperately seeks. CPR

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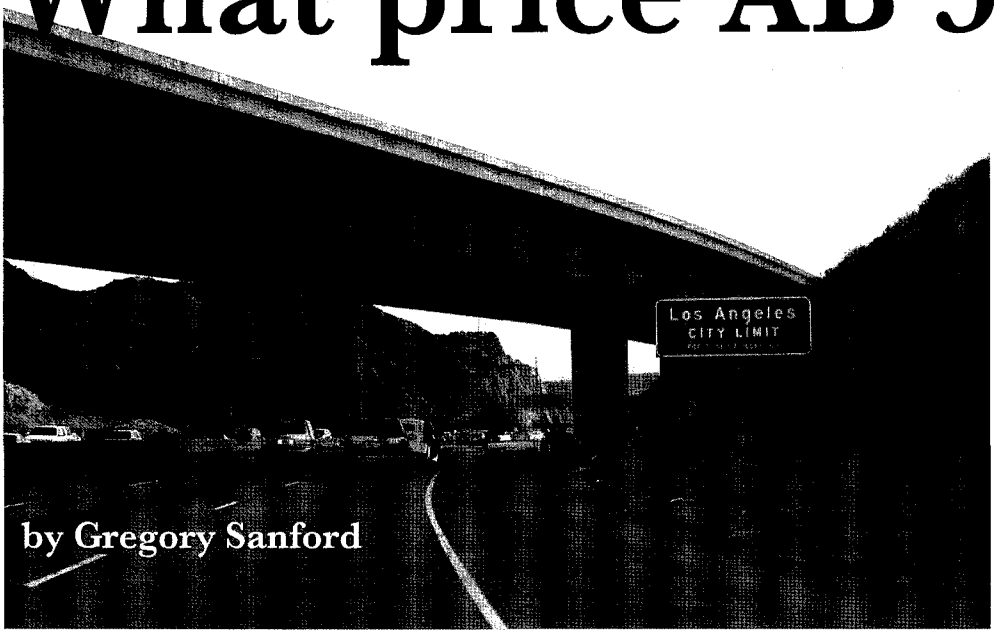
What price AB 32?



by Gregory Sanford

Do Californians know the Global Warming Solutions Act's *full* potential price tag? That it *won't* reduce greenhouse gases? Or that ignorance of this new law could cost us hundreds of *billions* of dollars.

Beginning shortly after his 2006 election as California attorney general, Jerry Brown showed he'd lost none of the old Moonbeam spirit. He revived his predecessor, Bill Lockyer's, "silly" — to borrow the adjective even the *Los Angeles Times* thought appropriate for describing it — anti-automaker lawsuit (for a full update on this Lockyer/Brown litigation, see: "The public nuisance is in the A.G.'s office," by M. David Stirling and Timothy Sandefur, *CPR,* this issue, page 7). He also launched litigation against local government entities that he judged insufficiently zealous in pursuit of a Carbon dioxide-free California. Republican state senators, however, during last summer's budget battle, succeeded in eliminating funding for Brown's anti-local government litigation. At the time, it was widely predicted that the attorney general, who evidently enjoys various alternatives for funding such activities, would merely find another way to move the litigation forward. The GOP senators' "victory" was dismissed as merely symbolic with little real significance. But a funny thing has happened — it now appears the attorney general has put that particular anti-Global Warming salient on hold or, possibly, has abandoned it altogether.

That's how politics works. It is often less a game of who is absolutely strongest, with both sides pouring in everything they have, than one of feint, counter-feint, and calculated risk. Losing is often simply a matter of failing to show up for the contest, while winning sometimes requires no more than a convincing show to the other side that you will not give up without at least a token level of resistance.

This lesson is particularly important in the battle over enviro-regulatory policy in Cal-

Gregory Sanford, a frequent contributor to CPR, *writes on California politics and policy.*

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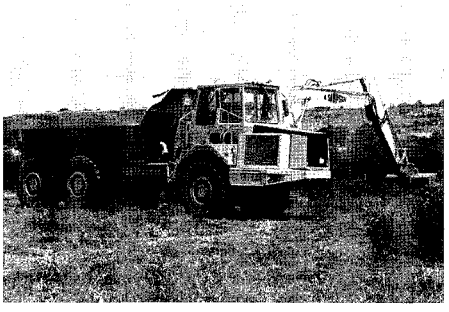
ifornia. The pro-regulation side has invested vast resources trying (largely successfully) to create an air of absolute inevitability about its program. A culture of pre-emptive surrender has been instilled in their opponents, who often find themselves adopting the very terms of debate formulated by their adversaries, terms calculated to decide the contest against them even before they begin. For example, on regulatory policy, the debate is routinely said to be one of setting the proper balance between saving the environment and preserving a healthy economy, which often degenerates into a supposed clash between altruistic striving to "save the planet" against narrow-minded businessmen's greed. Not only is this formulation pre-stacked in favor of heavy regulation, it misstates the competing interests actually involved.



To illustrate: Last July, California air quality regulators and the state Air Resources Board (CARB) adopted America's most draconian emission standards for off-highway diesel vehicles — bulldozers, for example, and other construction machines. For three years, affected businesses had been trying to work with regulators to achieve the intended environmental goals in the most economically efficient way possible — *i.e.,* following the standard formula of balancing enviro/econ concerns to reach a "fair" solution. At the end of the process, the affected businesses said the new rules that state regulators were planning to adopt would prove unnecessarily difficult, even impossible, to comply with (if the businesses were to remain economically viable). As a final effort, their "Coalition to Build a Cleaner California" — a business/labor alliance formed to represent them — publicly proposed alternative regulations. This was a broad-based coalition, including representatives of labor (carpenters, laborers, and operating engineers, among others); the construction industry (contractors, engineers, and builders); other people affected by CARB's proposed regulations (the California Ski Industry Association, for example, and the Air Transport Association); and infrastructure stakeholders like the California Building Industry Association and the California Alliance for Jobs.

The Coalition said its proposed alternative approach "would clean up the air while keeping the most number of construction companies in business and workers employed; the bidding environment at its most competitive; the Rebuild California bond program on schedule; and construction cost increases to a minimum." The CARB and Coalition proposals, it turns out, diverged in only one significant way. The main difference was that the Coalition wanted to move

The pro-regulation side has invested vast resources to create an air of absolute inevitability about its program. A culture of pre-emptive surrender has been instilled in their opponents.

the 2020 goal for large diesel-powered fleets to 2025, a five-year delay "necessary," the Coalition said, "in order to allow more time for Tier 4 engines — which will achieve all the emission targets without any further retrofitting and will not be available until 2014/2015 — to enter the market and be acquired by contractors."

CARB's proposal, the Coalition said, relied on "faulty assumptions that overstate the availability of technology; understate the economic impact on the industry and its workers; and the detrimental impact upon the cost and timing of the infrastructure bond construction projects approved by voters last year."

Former CARB Chairman John Dunlap supported the Coalition. "Given the multi-billion dollar cost of this regulation," Dunlap said, "the construction industry should at least be given the opportunity to comply in the most reasonable and flexible manner possible. We can't emphasize this enough: This Coalition is not about scrapping CARB's proposed rules or targets. This alternative is the best way to achieve the desired emission reductions and minimize the cost to achieve the goal."

When CARB issued its rules, however, they

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disregarded the input from both business and labor. "With just a few changes," the business/labor Coalition reiterated after the new rules were released, "the Board had the opportunity to make this a win-win for California's environment and economy. Instead they adopted a rule that is not viable in the real world." CARB, however, after ignoring the Coalition proposal, simply claimed to have, in fact, achieved a perfectly wonderful "balance" of competing concerns. CARB Chairman Mary Nichols congratulated her agency for its work saying "it hasn't been an easy task to come up with a proposal that is both cost-effective and fair."

The Coalition, playing according to the imposed "environment vs. the economy" terms of debate, offered an altogether reasonable compromise, and were straight-armed out of the way by the bureaucracy for their trouble. Why? Because the issue does not pit the environment against the economy. It pits two radically differing views of how society should be organized and run: according to the accumulated judgments of the thousands, even millions of individuals living in the real world of real market economies as they go about their daily lives — or — according to a top-down, command-and-control structure through which a few people in government try to enforce order, a "plan," on what they see as otherwise little more than chaos — as the saying usually goes: doing "something" (regulating) or, by implication, doing nothing, in effect letting everything just fall however it will.

UC Berkeley Economics Professor David Roland-Holst, for instance, who has authored a series of supportive studies on California's "Global Warming Solutions Act" — AB 32, enacted in 2006, recently summarized for an interviewer why people in government tend to favor inflexible controls in environmental regulation. It "sounds like paternalism," he said, "but it works. That's why California has really relied on command-and-control for its energy policy." That is, rigid rules achieve the desired results most effectively *from the perspective of the state.* Command-and-control simplifies and streamlines regulators' jobs: it reduces *their* "costs": lengthy negotiations, horse-trading and compromises, delays in achieving set goals, etc. Professor Roland-Holst did not mention the cost to the economy of such command-and-control methods. Those costs are not borne by people in government — *unless* the people out in the real world who *do* pay those costs take the extra step of exerting political pressure on the people in government, insuring that they "feel their pain."

That is, command-and-control brings its own built-in incentives enticing those in government to favor that approach, while incentives moving the state to adopt a flexible approach must be created from the outside. California's Republican senators did just that: creating incentives for the attorney general to back off from his local government litigation. In contrast, by playing according to the preset game-plan, the business/labor coalition created *no* such incentives for the CARB folks to listen to them with regard to the new diesel-emission rules, and left Mary Nichols to talk airily about having adopted rules both "cost-effective and fair" — when the rules were, in fact, neither.

This all becomes increasingly relevant as California moves ever further into its era of Kyoto Protocol-style regulation under AB 32. 32's main goal is to return the state, by 2020, to 1990-level carbon-dioxide emissions. A point of clarification should be made at this point: this article will not go into the myriad controversies about Global Warming *per se* — the author has his opinions about them, but for today, the topic is more narrow: AB 32 and its impact on our state — a subject more than large enough for one, or even many, articles. Put simply, this law, as it is implemented, promises (and is already having) an enormous impact on the state economy. It will also hold far-reaching implications for state politics and government for decades to come. One area, perhaps strangely, in which it will have virtually no measurable effect is with regard to global levels of greenhouse gases. Let's take these points in order.

ECONOMIC IMPACT

In June 2007, finance and business consulting firm CRA International (whose clients include major industries and governments around the world) published an in-depth study of AB 32. CRA's report, "Economic Analysis of California

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Climate Initiatives: An Integrated Approach," concluded that the cost of meeting AB 32's main goal — matching those 1990-level carbon-dioxide emissions by 2020 — would, at a minimum, top $100 billion, and could range to levels as high as two or three hundred billion dollars *more* than that by the year 2050. Just how high those actual costs go, according to CRA, will depend upon hundreds, perhaps thousands, of decisions made by state bureaucrats and lawmakers over the next two or more decades. The key variable, the report said, was the extent to which those implementing decisions reflect either a top-down, "command-and-control"-style approach to regulation or, alternatively, employ "comprehensive market-based approaches that preserve environmental gains and allow flexible choices to reduce costs." The phrase "market-based approaches" is becoming standard bureaucratese for some sort of carbon-credit buying and selling regime, but this is by no means the only area where flexibility in the law's implementation will prove important.

Far more important, in determining the full blow California's economy will eventually endure, will be the accumulated flexibility found in the regulatory regime established by such entities as CARB. To be specific: the key is going to be how much the state respects such market realities as it manifestly ignored in imposing its new diesel rules last summer, the sorts of realities the business/labor coalition pled with the bureaucrats to respect and respond to, to no avail. By extension, then, the key will be to what extent ordinary Californians, in business, as job-holders, as consumers — in whatever capacity they are hit by the AB 32 regulatory juggernaut — bring pressure onto the state power structure demanding that it be flexible in this way.

WHO WILL PAY THE BILL

Every Californian indeed has a stake in these questions because every Californian will see higher prices affect his business, his job, and, overall, his living standard as a consumer of goods and services. For example, the California Public Utilities Commission predicts a probable 30 percent rise in state electric power rates by 2020. The *Los Angeles Times* reported that industry estimates say AB 32 will increase a vehicle's retail price as much as $7,000. The *New York Times* reported that the compact fluorescent light bulbs Californians will soon be required to buy "generally cost six times what incandescents do," though they might save money over several years' time.

These sorts of costs will be multiplied hundreds, perhaps thousands of times, throughout virtually everything Californians do in their economic lives if the full scope of regulation envisioned under AB 32 is realized. California Air Resources Board member Stanley Young, quoted December 4 by *San Diego City Beat,* summarized the vision animating AB 32: "We've got only five years to develop regulations for every sector of society."

The full cost of those regulations will be determined by hundreds, perhaps thousands, of decisions made by state bureaucrats and lawmakers, and by how business owners and investors respond to those decisions, over the next two or more decades. But that the final bill will be huge is made clear by the CRA International report.

AB 32, the study concludes, will "depress real wages, negatively affect terms of trade, [and] diminish consumption." More specifically, "the costs of GHG [Greenhouse gas] reductions [will] cause selected industries to contract," and that, in turn, "will weaken demand for labor and real wages will fall. Reductions in wage earnings, coupled with a decrease in net export earnings for California, mean that California would have fewer resources to spend on consumption of goods and services." In addition, "as the economy contracts because of the carbon policy, California becomes less attractive for investment, compared to other regions that are free of any emission constraint."

The broad economic effect of "imposing GHG controls in California," the report states, will be to "increase in-state production costs thereby permitting out-of-state businesses to raise the prices that they charge California customers and still remain competitive. For California exporters, on

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the other hand, although GHG controls will increase their production costs, they will find it difficult to raise prices for their out-of-state customers, as long as their out-of-state competitors do not face the same policy-driven cost increases. These changes erode the purchasing power of Californians, which will decrease their consumption and economic well-being."

These net effects of AB 32, CRA reports, will "be particularly harmful to energy-intensive producers within California, such as chemicals and cement," and will contribute further to driving investment out of our state.

California Air Resources Board member Stanley Young, quoted Dec. 4 by San Diego City Beat, *summarized the vision animating AB 32: 'We've got only five years to develop regulations for every sector of society.'*

RESPONSE OF 32'S SUPPORTERS

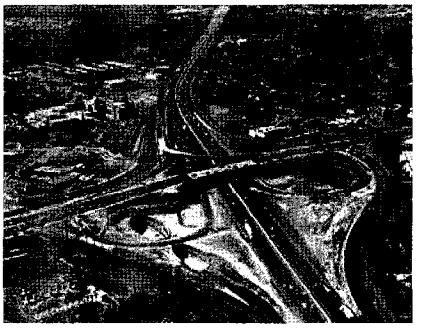
AB 32's supporters answer these predictions by arguing that more efficient technology and business practices developed in response to the new law's mandates will eventually save as much or more than the regulations will cost. For example, a widely-cited economic analysis published during the pre-enactment debate on AB 32 by UC Berkeley's David Roland-Holst (quoted above discussing "command-and-control") concluded that the new regulations would slightly increase California's Gross State Product and statewide employment by 2020, findings echoed by reports issued by state government agencies.

None of these reports explains, however, why, if in fact the economy will improve and the players in it will be better off economically by making the changes the new law mandates, we need a law at all. If doing what 32 commands were good for profits and jobs, the market would exert ample incentives to move people to do it. But the whole premise of the heavy regulatory approach, as Roland-Holst explained earlier, is to force people to do what they will not do on their own — "it works."

The conclusion that this regulatory regime will *not* pay for itself was firmly ratified by a recent Harvard University study, "Too Good to Be True? An Examination of Three Economic Assessments of California Climate Change Policy," published January 2007. The Harvard researchers found that the Roland-Holst and other such studies "underestimate costs by omitting important components of the costs of emission reduction efforts, and by overestimating offsetting savings that some of those efforts yield through improved energy efficiency." The Harvard researchers wrote that even only "a few of the identified flaws" in the Roland-Holst studies "individually lead to underestimation of annual costs *on the order of billions of dollars.* Hence, these studies do not offer reliable estimates of the cost of meeting California's 2020 target." *[emphasis added]*

WHAT 'DOING SOMETHING' ACTUALLY MEANS

So how can the people create political incentives for those in government to implement AB 32 with reasonable flexibility and respect, as much as possible, for market realities? The answer is to participate in the public debate on this law. The state government power structure enjoys popular support (according to survey results) for "doing something" under AB 32. But do the Californians who say they support 32 know what "doing something" actually means under this law?



The 2006 California Chamber of Commerce list of "job killer" legislation included AB 32, saying the bill "increases costs for California businesses, makes them less competitive, and discourages economic growth." The Chamber's description added that the bill promised "little or no proven environmental benefit ...." After the governor signed the bill in the fall of 2006, Chamber Media Relations and External Affairs Vice President Vince Sollitto told reporters "our primary concern is that AB 32 will drive our costs higher and take jobs and greenhouse gases else-

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where." The Chamber thus twice raised a concern most media reporting has ignored but which, if valid, fundamentally alters the debate about the Global Warming Solutions Act: can the Act, no matter how it may be implemented, actually do *anything* to reduce global warming, that is, to impact the environment? If the answer is no, then the issue is no longer one of achieving a healthy environment at the least possible cost to the economy. For ordinary Californians it becomes a matter of incurring significant costs for little or no environmental benefit at all.

A closer look at polling on this issue suggests that while a large majority of Californians support efforts to reduce Greenhouse gases (GHG), support for AB 32 could be expected to decline if people learned it will prove costly but won't affect Global Warming.

WHAT DO THE LAW'S SUPPORTERS SAY?

It turns out the California Chamber is not alone in predicting that AB 32 will fail to deliver hoped-for reductions in Greenhouse gases. 32's supporters say so too. As explained by *San Diego City Beat* writer Cosmo Garvin — a firm supporter of the new law — 32 suffers from a fatal defect as a weapon for protecting the environment (the following appeared in the December 4 article cited above quoting Stanley Young of CARB):

> If you wiped California off the face of the planet [Garvin wrote], just made it disappear — left behind no car or SUV, politician, person or cow — you'd eliminate only about 1.6 percent of the greenhouse gases that are warming the planet.
>
> Keep California and lose Texas, and you'd more or less double the benefit to the planet, but you'd still be a long way short of solving the problem of global warming.
>
> So it's hard at first to see how California's highly touted experiment in planet saving, the Global Warming Solutions Act of 2006, or just AB 32 for short, is going to make much of a difference.
>
> But on a human scale, on the scale of what government can do, AB 32 is an enormous undertaking. "We've got only five years to develop regulations for every sector of society," explained Stanley Young of the California Air Resources Board (CARB).

AB 32's potential to "do something" about Global Warming was described in an August 2006 *Orange County Register* article by economist Benjamin Zycher.

Zycher, discussing a 2006 California Climate Action Team report favoring adoption of AB 32-style regulations, noted that CCAT's report failed "to tell us the predicted reduction in future temperatures if 1990-level [carbon-dioxide] emissions are achieved" by 2020. Zycher provided the missing information: "If California were to achieve the carbon-dioxide reductions, the predicted decline in world temperatures in the year 2100 would be thirteen one-thousandths of a degree Celsius. If the entire U.S. were to achieve those reductions, the decline would be sixteen one-hundredths of a degree Celsius. The figure for the 34 most-developed economies would be one-third of one degree Celsius. If we add China, the figure is forty-five one-hundredths of a degree Celsius. Such changes are far too small to matter."

While perhaps agreeing about little else, both supporters and critics of California's "Global Warming Solutions Act" do agree that it is, in fact, no "solution" for Global Warming at all.

SHOWING 'WHAT GOVERNMENT CAN DO'

So what, then, is AB 32 all about? It is not, apparently, a matter of "making much of a difference" on Greenhouse gases but is, rather, an "enormous" demonstration of "what government can do" in imposing massively detailed regulation and in regimenting the people. It begins to look as though popular support for AB 32 is based on a myth. The question is: Will the people adjust their support for 32 if they learn the truth about its heavy costs and lack of environmental benefits? With billions of dollars and the specter of minute regulation covering "every sector of society" at stake, the need is imperative to convince the state government power structure to be flexible and reasonable in implementing this law. And the only way to do that is to inform the public about it so people will demand a common sense, least-cost (least command-and-control) approach to its implementation. Let the no-holds-barred statewide educational debate on Common Sense and AB 32 begin. CPR

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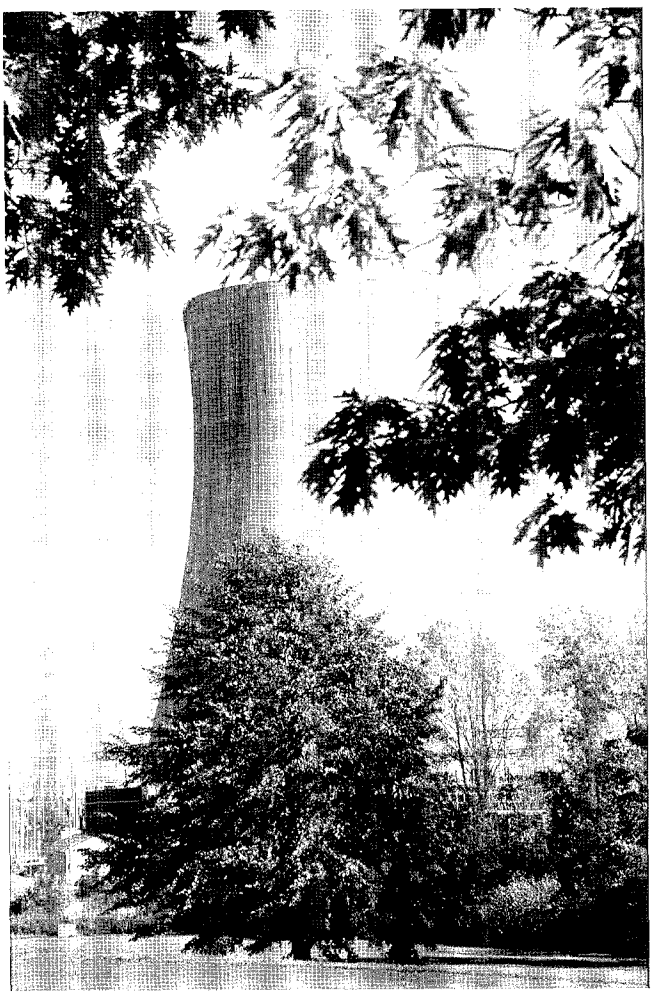
Nuclear power:

Safe, inexpensive, produces *no* atmospheric emissions, presents no supply problems, and it works for people all over the world ... so naturally the left hates it



by Theodore A. Alta

Sometimes you have to hand it to the left: at least they never lack for *chutzpah.* More timid souls might well blanch at launching a major assault on nuclear energy right in the middle of an all-out, world-wide campaign against fossil fuels and carbon dioxide-generating sources of power, inasmuch as the most obvious, economical, safe alternative if we are to dispense with oil, *et al,* is to go nuke. But that is just what is happening.

Check out *NukeFree.org* — "Do something" it says at the top of

Veteran political writer Theodore A. Alta runs a small business in Southern California.

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its home page. This is the eco-era equivalent of old socialists arguing for a "planned" economy, blithely implying that millions of people going about their productive lives, feeding their families, providing useful goods and services to the nation, giving America the highest standard of living the world has ever seen — that it was all just so much chaos because no commissar had imposed a "plan."

Today, centrally-planned economies having been thoroughly discredited as always reliable producers of poverty, corruption, despotism, and waste, the jargon has changed, though the message remains the same. Now we must "do something" — to stop the threat of people providing themselves cheap, safe, reliable energy from nuclear power plants, as if permitting ordinary folks to take care of themselves and their own energy needs without government interference is "doing nothing."

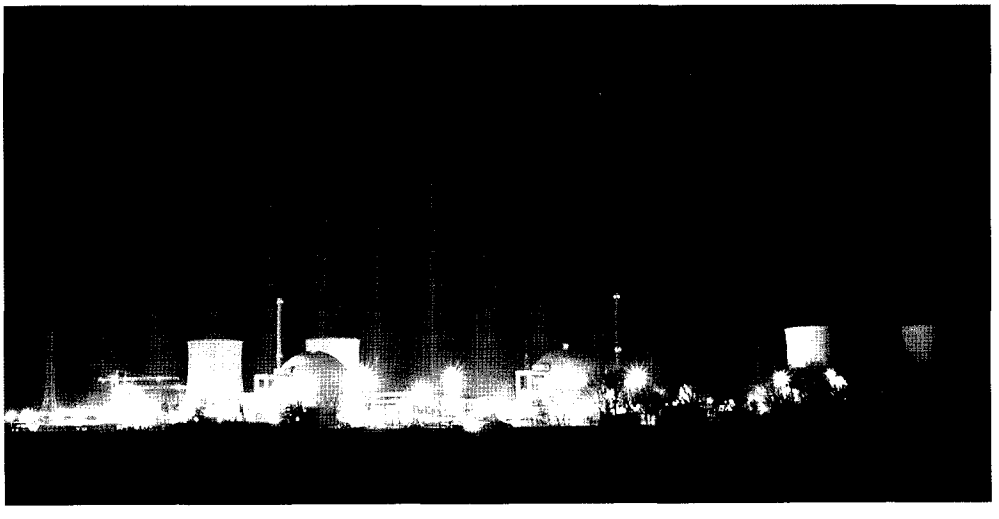
NukeFree.org is a cookie-cutter operation, confirming once more that nothing soothes the leftist mind quite like slavish conformity to a numbingly over-used formula. "Join us" the site invites visitors to do, as a list drifts by of all the nation's most impressive deep thinkers about public policy and the common good: Hip-Hop Summit Action Network; Henry, JoJo, and Ringo Garza; Boys; Artists for a New South Africa — but then some names that even I, old as I am getting to be, recognize: Robert Redford, Jane Fonda, Tom Hayden, Jackson Browne, and, of course, the Sierra Club and Greenpeace USA.

Next there's a button to push for a musical interlude with the aging Bonnie Raitt, Jackson Browne, and a stunningly white-haired Graham Nash singing a version of the old Buffalo Springfield hit "For what it's worth" (which originally included the highly appropriate, in this setting, lines: "Paranoia strikes deep/ Into your life it will creep"). This version, of course, is updated to warn us about the fearful specter of free people achieving energy security through nuclear power plants ("What a field day for the Nukes").

In and around the pea-soup-thick rock-concert milieu, *NukeFree.org* also hazards a few straightforward statements, supposedly of facts, to back its "just stop it" message. They appear, however, to be of the Dan Rather "correct side of history" *genre* of "facts" — not actually true, but politically useful, and that's enough at *NukeFree.org*.

First, going to the heart of the matter, the site says nuclear power aggravates global warming. How? Well, nuclear fission produces no atmospheric emissions, it is true, but, well, we still have to mine the uranium, build the plant, and get people to and from the location to work, and all that produces CO^2 — all points equally true of the necessary human activities ancillary to every kind of "green" energy production. We could argue with equal logic in this vein for the shut-down of all Hollywood recording studios, and a ban on rock 'n roll — all that exhaling, instrument construction, electronic equipment use forcing a power plant somewhere to go into action — why, to be built in the first place, and on and on. As any serious discussion of reducing greenhouse gases would note, (and as a recent Heritage Foundation Backgrounder in fact did note): "... the 104 [nuclear] plants operating today prevented the release of 681.9 million metric tons of CO^2 in 2005, which is comparable to taking 96 percent of cars off the roads." Jackson Browne has the words for this charge: Running on Empty.

Next *NukeFree.org* says the problem of nuclear waste has no solution. Wrong again. Spent nuclear fuel can be, and is — every day — reprocessed, dividing unused fuel from waste products which are then placed in long-term storage. France and other countries do it routinely with perfect safety. A federal ban on recycling the spent fuel, dating from the 1970s, is the only barrier in this country to this long-established "solution" to the "problem of nuclear waste."



NUCLEAR POWER PLANT IN BIBLIS, GERMANY

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The ban should be rescinded.

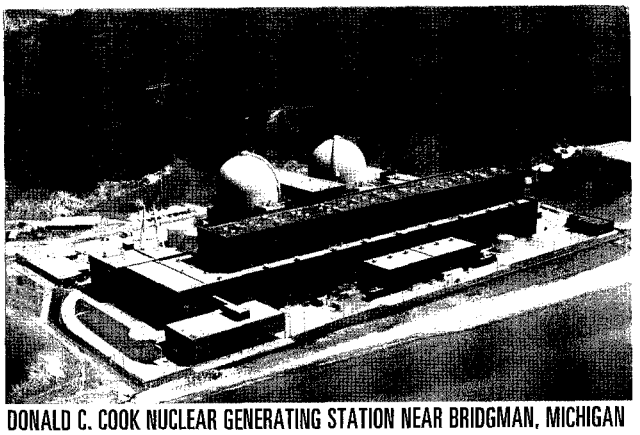
Charge three: Radiation released by nuclear power is dangerous. No, it is not. According to the U.S. Department of Energy, Americans are exposed, on average, to 360 millirem of radiation a year — 300 millirem from such natural sources as cosmic rays, radon gas in the atmosphere, and uranium in the Earth's crust; another 11 millirem from various consumer products, and most of the rest from X-rays and other medical procedures. Living near a nuke plant exposes a person to 1 millirem a year. That's less than you get in a single flight from Los Angeles to New York (2.5 millirem). What's that you say Jackson? You've been waiting ... to awaken ... from these dreams?

Then: nuclear reactors are vulnerable to a terrorist attack. It would be as relevant to say we should shut down all the schools because they, too, are possible targets. And while several schools — thanks in many cases to foolishly-imposed "gun-free zones" — have in fact been hit by killers with terrible results, of the 104 U.S. and 446 worldwide commercial nuclear power plants, exactly zero have been attacked successfully by terrorists. Nuclear reactors are designed to withstand the impact even of passenger airplanes and, unlike our schools, are protected by realistic security measures.

Charge five: transporting radioactive materials exposes people to unacceptable risk. To quote Heritage on this point: "The U.S. Nuclear Regulatory Commission and other regulatory agencies around the world take the strictest precautions when dealing with spent nuclear fuel. Since 1971, more than 20,000 shipments of spent fuel and high-level waste have been transported more than 8 million miles worldwide without incident."

The related charge that nuclear power plants are especially vulnerable to accidents and especially dangerous if accidents happen is another myth. The worst-ever nuclear plant accident — Chernobyl — claimed fewer than 50 fatalities. By comparison, Mothers Against Drunk Driving reports almost 18,000 people died in alcohol-related accidents in the United States in 2003. The National Safety Council reports that 113,000 Americans died from all kinds of accidents in 2005. If we go by experience, and shut down all activities that have led to 50 or more accidental deaths in worst-case scenarios, we will have to stop drinking, eating, taking medicine, working, moving, and living. But experience is not the stuff of which good scare campaigns are made.

NukeFree.org, finally, shows its broad-mindedness by worrying about nuclear power investors and American taxpayers. They argue that nuclear energy is not economically viable and that the federal Energy Policy Act of 2005 includes unjustifiable incentives favoring nuke plant investment and construction which would not be needed, they imply, if nuclear power made sense in the open market. They ignore the massive risk imposed on investors not by the market for nuclear power itself, but by excessive government intervention burdening it. The risk has been significantly aggravated by left-wing activists' targeting of nuclear power for endless legal challenges and political pressure, simply because they oppose nuclear power as policy and want to deprive us of it.



DONALD C. COOK NUCLEAR GENERATING STATION NEAR BRIDGMAN, MICHIGAN

The truth is, America today receives 20 percent of its electricity from nuclear energy, notwithstanding the gross, costly over-regulation and legal harassment to which the industry is subjected. Get rid of the outright bans already in place, create a stable outlook for building and using nuclear plants in the future, and lighten up on state-imposed costs — then investment will flow freely.

A new, more rational look at the many advantages of going to nuclear energy to supply electricity is long past due and, given the current movement to find alternatives to fossil fuels, chances for such a reassessment are good. And there's an added benefit, for Jackson Browne anyway. He might gain a new hit by slightly altering an old song:

Doctor, my eyes —
Tell me what was wrong!
Was I unwise
To leave them closed so tight so long?

CPR

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CRITICUS CLASSICS

Be it Resolved

BY G.B. TENNYSON

NEW YEAR'S Resolutions have their origin in pre-history. Charles Panati's *Extraordinary Origins of Everyday Things* asserts that the earliest recorded instances of making such resolutions occurred 4,000 years ago with the Babylonians. Panati is not always totally reliable in his explanations of origins — he is wrong about the Barbie doll, for example, though in this he was probably following the propaganda given out by Mattel (the true story in a future "Criticus" should there be any demand) — but he is certainly in the right neighborhood in noting that New Year's Resolutions are of great antiquity. The Babylonian resolutions were of a somewhat loftier kind than determinations to lose weight or stop smoking; theirs usually consisted of intentions to pay off debts and return borrowed items. Much the same is true of other times and tribes. An out-with-the-old, in-with-the-new impulse often came also with extravagant and wanton celebrations, followed by the resolve to improve. It appears that there is something close to a universal need to mark an annual turning point with resolutions regarding improved conduct. That being said, the differences between contemporary western ideas of New Year's Resolutions and the ancient and traditional ones are almost as great as the similarities.

In the first place, the New Year was most often celebrated in the spring at the vernal equinox, though there are instances of its being marked at the summer solstice, at the autumnal equinox, and at the winter solstice. All of these solar turning points would have had considerable significance in agricultural societies. The springtime one marked the beginning of the season for sowing seeds, and the autumnal one marked the harvest season. Are there any among us who remember that rousing hymn that celebrates both the sowing of the seeds and the reaping of the harvest?

Sowing in the morning, sowing seeds of kindness,
Sowing in the noontide and the dewy eve;
Waiting for the harvest, and the time of reaping,
We shall come rejoicing, bringing in the sheaves.

The Chorus, of course, twice repeats "bringing in the sheaves," and ends with the repeat of the final line, "We shall come rejoicing ...." etc.

Yes, Criticus can sing it still, those words that link renewal and reward with the turning points in the solar year. And, in the spirit of the Old Time Religion from which hymns like this stem, we note that by

California Political Review *herewith inaugurates an annual recollection of the work of longtime contributor G.B. Tennyson, reprinting one of his classic columns. "Be it Resolved" first appeared in* CPR *'s January/February 2000 issue.*

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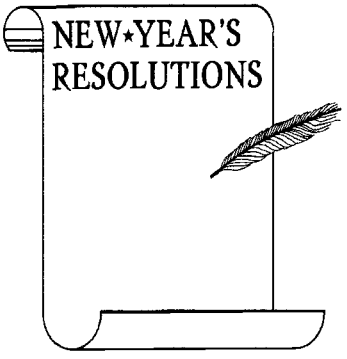
verse three the nature of sowing and reaping as metaphors for conduct is made explicit: the sowing is our life's conduct, the reaping is the fruit of that conduct, sometimes fraught with sadness and remorse. But for that sowing and reaping in the fullness of His mercy "He will bid us welcome" as we come "bringing in the sheaves."

It is not surprising, then, that most of Christendom, following Dionysius Exiguus's calendrical purifications, marked the New Year in the spring, most specifically on the twenty-fifth of March, known in English-speaking countries as Lady Day, more formally as the Feast of the Annunciation. England and the American colonies observed that day as the beginning of the New Year until 1752 when the Gregorian calendar was finally adopted by England. That transferred the New Year to January 1st, as had been the Roman custom from the time of the introduction of the Julian calendar. That in turn was the recovery date, so to say, from the celebration of the winter solstice, known as the Saturnalia and reviled by early Christians as pagan and wanton, which it was. Holy Church substituted Christ's birthday, the 25th of December, that being exactly nine months after the Annunciation and neatly falling almost at the solstice. (Until the correction made by the Gregorian calendar the date was December 15th; see "Criticus" in the previous *CPR.)* Of course the date was arbitrary and, as modern scholars believe, erroneous. Nevertheless, it gave religious sanction to the idea of January first, the Feast of the Circumcision, as the start of the New Year and another way of supplanting pagan revelry with Christian piety. The Church also added the sombre Advent Season to precede Christmas as a way of toning down the Saturnalia.

None of this entirely worked, of course, as the persistence of New Year's revels attests. And in modern America's secular culture it works even less. The Advent season and even Christmas itself have been transformed into a kind of month-long party time so popular that American Judaism has been moved to elevate the once trifling festival of Hanukkah as a rival and a black academic changed his name to an African one and invented a so-called harvest festival he named Kwanzaa. Thus we have the eight days of Hanukkah and the seven days of Kwanzaa and something like the thirty-plus days of Christmas. Which brings to mind the following little vignette for our times.



England and the American colonies observed March 25 as the beginning of the New Year until 1752 when the Gregorian calendar was finally adopted by England.

Receptionist in dentist's office to Criticus: "Your appointment will be on January 5th."
Criticus: "Ah, Twelfth Night."
Receptionist: "No, the fifth."
Criticus: "I mean Twelfth Night as in Shakespeare." (Mute stare of incomprehension from receptionist.) "You know, as in the "Twelve Days of Christmas."
Receptionist (in doubtful tone): "Well, I've heard the song."
Criticus: "We'll leave it at the fifth, then."

Still, some fragments of the serious side of things can be shored against the ruins. They show themselves in such notions as depicting the New Year as a babe in diapers (an unconscious reference to the Holy Child?) and the old year as a grey-bearded man (Old Nick or just old man?); or setting off firecrackers, blowing bells and whistles, banging gongs and cymbals to chase away the old and greet the new; or the Texas custom of eating black-eyed peas on New Year's day for luck; and, one of the most engaging of all, the Mexican practice of always putting on fresh underwear for New Year's Eve (one hopes that is not the *only* day in the year that this is done). But ever along with all that we have the persistent custom of making those New Year's Resolutions.

AS RESOLUTIONS go, paying off debts and returning hedge clippers, albeit pedestrian, have to do with moral behavior. By contrast, resolutions in America center on one's physical well-being rather than on one's moral, let alone spiritual, state. There may be those who vow to themselves not to miss another Sunday or Holy Day in church, but the most popular resolution must be the one about losing weight, closely tied in with general matters of diet, such as consuming less of various foods and drink. Second must be the one about cigarettes, though such a resolution seems supererogatory

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now that the state has taken it upon itself to criminalize that activity, going so far as posting hot-line numbers in grocery stores that one can call to report the sale of cigarettes to minors. You remember minors, of course: they may wamble about in casinos and may well be provided with condoms at state expense, but God forfend that they possess a cigarette. Ah, enlightened liberalism.

In the spirit of the season Criticus himself made the customary resolutions. A few Constant Readers can imagine what those resolutions touched upon, but for the weaker brethren it is better that they not be itemized, lest they lose faith in Criticus's guiding wisdom. Or as the radio queen of the ten-minute sermonette, Dr. Laura, likes to put it, "Do as I say, not as I did." (That was designed to head them off at the pass, but, alas, the pictures have long since been flashed about the Internet.)

Dentist office receptionist to Criticus:

Your appointment will be on January 5th.

Criticus: *Ah, Twelfth Night.*

Receptionist: *No, the fifth.*

SO, FOLLOWING the television coverage of the New Year around the world (Paris won hands down), Criticus pondered his conventional little resolutions until a loud, large voice sounded in his mind, saying "Clear your mind of cant," and he realized he was on the wrong track.

The voice was, of course, that of the great Dr. Johnson, who spoke thus to Boswell and, thanks to Boswell's dutiful note-taking, also to us in these aftertimes. *Cant* is a word not much used anymore, but it dates from at least the sixteenth century and was most widely used in the eighteenth and nineteenth. It appears to derive from the same source as *chant, descant, cantor,* and many others, all ultimately from the Latin *cantare,* to sing. But *cant* came to mean, first, a kind of whining, artificial way of speaking, then a jargon peculiar to rouges and thieves, then a sort of formulaic, perfunctory phraseology, and by Samuel Johnson's time (as we learn from the *Oxford English Dictionary),* phrasing "taken up and used for fashion's sake, without being a genuine expression of sentiment" and, in its most negative character, "affected or unreal use of religious or pietistic phraseology; language implying the pretended assumption of goodness or piety." As Johnson went on to say: "You may *talk* in this manner; it is a mode of talking in society; but don't *think* foolishly."

Oh, dear. Was Criticus in composing his would-be pious little resolutions letting his mind fill with cant? As Johnson also said to Boswell of a certain cleric, one Dr. Dodd: "He may have composed this prayer then. A man who has been canting all his life, may cant to the last." And as the incomparable Lawrence Sterne said, "Of all the cants which are canted in this canting world, the cant of criticism is the most tormenting." Even the ever-optimistic Americans agreed: "Criticism is infested with a cant of materialism," said Emerson. And James Russell Lowell put the case with withering scorn: "Enthusiasm, once cold, can never be warmed over into anything better than cant."

So Criticus threw out all his canting resolutions and started on more high-minded ones. Such as:

• Do not discuss the dating of the Millennium any more. You have become a bore on the subject.

• Stop reading junk mail, especially those catalogues that want to sell you such things as two sets of "washballs" for $14.98, washballs being little round colored balls of some sort of fluff that allegedly will collect lint and pet hairs from your wash, as if there were no lint filter.

• Stop reading virtually every word of the daily paper, perhaps cease with it altogether and substitute the Internet as a youthful Constant Reader of Criticus's acquaintance has done, anticipating Tim Ferguson's advice in the last number of *CPR.*

• Restrict that most pernicious of addictions, namely, watching television news with its ceaseless non-news fear-mongering — "Could your child get lice?" "Do you know what may be lurking in your refrigerator?" "How safe are prescription drugs?" "Can you trust the labels on packaged goods?" "Are you being cheated at the checkout counter?" Always followed by "Coming up" or "Later in the program" and then a switch to commercial.

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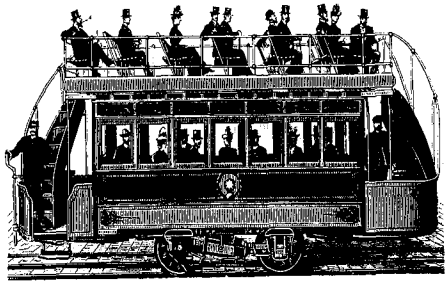
• Make a contribution to the Southern Military Institute. Persuade *CPR* editor to do likewise.

WELL, I was rolling along in this vein when, lo, this time the proverbial still, small voice broke in with, "What after all is a resolution anyway?" I replied, "Ha! We all know what a resolution is, don't we? We resolve to do a certain thing." "And resolve? What is that?" replied the voice. Before I could answer, it went on: "Remember Hamlet's soliloquy? The one about the solid (or, as purists have it, the 'sullied') flesh?" Of course Criticus remembered. As every schoolboy knows, Hamlet's second most famous soliloquy begins: "Oh that this too too solid flesh would melt, / Thaw, and resolve itself into a dew." *Resolve* itself? Make a *resolution* of itself? Determine itself to do something? Choose a firm course of action? No, as every schoolmaster knows, *resolve* here means *dissolve, liquefy,* in fact to cease to be itself, even to cease to *be.* Hmm. How can *resolve* mean to make firm *and* to disappear, to implement *and* to melt away?



A few Constant Readers can imagine what the Critical resolutions touched upon, but for the weaker brethren it is better that they not be itemized, lest they lose faith in the Critical guiding wisdom.

So it was back to the glorious *Oxford English Dictionary.* Tempering the wind to you shorn lambs, and mindful of space constraints, Criticus will not this time trace the entire path he was obliged to take through the forest of entries under the words *resolve* and *resolution* (30 pages of computer printout). Instead I will simply reveal the results of my inquiry, which I believe has unearthed a linguistic first. Those results are that both *resolve* and *resolution* are among the very small number of words in the English language that carry antithetical meanings. I consulted a cunning academic linguist of my acquaintance to ascertain the term for this phenomenon, and he told me there was no such but that he himself had in a learned article coined the term "homonymic clash." What we are talking about here is the issue of words like *let* and *let, cleave* and *cleave.* And an interesting issue it is.

As every English major used to know, *let* means both to permit and to hinder, *cleave* means both to sunder and to cling to. Properly put, I suppose one should say that they are each different words that time and the vagaries of English spelling ended up making look identical. Now to this exclusive club we may admit *resolve* and *resolution.* That aspect of these words that suggests melting or dissolving is nowadays rather less frequently encountered than the aspect that means to make firm, to determine, to fix something securely. But it has not entirely disappeared, as when we resolve a problem, find a resolution for a difficulty, for we are certainly not locking anything into place, we are reducing it, melting it into something less or dissolving it entirely away. "They had a disagreement but resolved it, and now it's all gone." Meantime, the sense of firm determination continues with our resolve-words, as in those still nagging New Year's Resolutions, to say nothing of parliamentary ones, or of men of firm resolve. All this leading to such an oddity as: "I was resolved to resolve the disagreement." Just as one might say, "Othello's love makes him want to cleave to Desdemona, but his rage makes him want to cleave her in twain." (Yes, I know, he murdered her in another way. Don't write.)

Apart from deciding that this great discovery of the antithetical nature of *resolve* and *resolution* should henceforth be known as the Criticus Clash, I was also forced to reconsider that which triggered all these philological ambulations through the OED — my New Year's Resolutions. Perhaps the Janus-like character of the word *resolution* itself is the reason that New Year's Resolutions so firmly undertaken so quickly melt away. In that case, so much the better. I no longer had to worry about breaking any of mine, so I threw them all out. All save one. It was among those unspecified resolutions regarding personal conduct that I alluded to earlier. Here it comes.

THIS PAST October a buoyant Criticus, having accomplished some fruitful literary research in the City of Dreaming Spires, repaired to London where he treated himself to several visits to the theatre. The best of these was the evening at the Lyric Theatre on opening night of the new Alan Ayckbourn play *Comic Potential.* Set in the not too distant future, it is a play about an an-

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droid who becomes human. This android is one of a number of such creations who are here called "actoids" because they have been designed solely to perform in television soap operas, a nice little dig at the nature of the genre and the performers in it. The actoids are supervised and manipulated by actual humans. The leading female actoid is played by an actress named Janie Dee in a brilliant performance that rightly gained rave reviews in all the papers the next day. Much of the charm was seeing her, starting as an automaton who could be made to stand still in any awkward position, little by little come to vivid and exuberant human life, finally moving with fluid energy and filled with human emotion for her human hero. Bravos all round.

IT WAS the sort of play that, were it a musical, critics would characterize as one that sends you out of the theatre humming its tunes. In such a mood did Criticus emerge onto Shaftesbury Avenue and make his jaunty way to a humming Piccadilly Circus and to the bus stop on Piccadilly itself just west of the Circus. A light drizzle had fallen earlier so the street was just barely wet. Though not yet late, only a single other person, a gentlewoman *d'un certain age,* was waiting at the stop as Criticus came along. Suddenly I saw that my Number 9 bus had just pulled away from the stop and was pausing as the driver waited for the moment to pull into Piccadilly Circus itself. A young man ran to it, leapt onto the back platform and moved into the bus. The open platform at the back of the double-decker was empty, so Criticus, android mimicking human, made a dash for it, intending to grasp the pole that passengers use to support themselves as they board and thereby to secure his ascent. Just as I was completing my run, though still in motion, and had half-seized the pole, the bus lurched into the Circus with surprising speed, my hand lost its grip, and I fell almost full-face down onto the street, slightly breaking the fall with my right shoulder which crashed onto the wet surface with fearsome force. By good fortune, it was the very last few feet of the bus lane, so the cars whizzing by on my right (remember, we're driving on the left here) were just beginning to move into the lane where I lay flattened and immobile like an android returned to its previous state.

Somehow I was able to rise up and make my way back to the bus stop. The only observer of all this folly, the aforesaid gentlewoman, looked at me and said, "Are you all right?" "Yes," I said. She paused just a bit, then said, "That was very foolish." Keeping my upper lip very stiff, I replied, "Yes, it was." A supremely English moment. We had no more converse. Another bus eventually came along, as buses will, and I boarded it with great care and, I hope, some dignity. Over the next week I watched my shoulder turn yellow, then brown, then purple, and in the fullness of time regain its normal color, though it ached for weeks afterwards.

When New Year's came around I made a resolution not to run after buses. It is the only one I am resolved to keep. CPR

BOOKS

Inconvenient truths — about Saddam

BY SI FRUMKIN

You may think a book with a chapter sharply criticizing French foreign policy would interest our media if the writer is currently France's foreign minister, and who, in addition to the chapter, had written the book's preface. You would be wrong!

The book, published in September 2005, has been largely ignored since then. Meanwhile, the new French President Sarkozy has selected the socialist Bernard Kouchner as France's minister of foreign affairs. Kouchner, a physician, in addition to contributing a chapter and the preface of the book, is the founder of Doctors Without Borders (MSF) and a prominent human rights campaigner. He calls the book's subject — and a friend and ally of France — "one of the worst tyrants in history."

The book is *Le Livre noir de Saddam Hussein (The Saddam Hussein*

Si Frumkin, publisher-editor of Graffiti for Intellectuals, *contributes frequently to* California Political Review.

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Black Book). It is a 701-page compendium by respected international authors — journalists, academicians, professors — who present conclusive evidence of the scope and cruelty of Saddam's regime.

It concludes, in the words of the editor, French journalist Chris Kutschera, that while the American war might not have been the ideal way to end Saddam Hussein's dictatorship, there was no better way. If there were no invasion, Saddam would have still been with us — and this was not acceptable. The current discussions and reminders of WMDs, faulty intelligence, dysfunctional democracy, continuous terrorism, Abu Ghraib, and the rest should fade into the background when compared to the quarter century of unrelenting bloodletting by Saddam.

He came to power in 1979 and — just like Stalin, one of his self-acknowledged political idols — immediately launched an ongoing massacre of critics and adversaries, both within and outside his Baath political party. Amnesty International and other international human rights monitoring organizations steadily reported the existence of torture, assassinations, rape rooms, prison horrors, and executions without having any success in generating meaningful world opposition or interest.

In 1980 he launched an unnecessary war against Shiite Iran and murdered tens of thousands of Iraqi Shiites to ensure their compliance. After the war ended, Saddam turned his attention to Iraqi Kurds. More than 100,000 were murdered in mass executions and aerial attacks — some using poison gas — on populated villages. Human Rights Watch declared this Kurdish "Anfal" extermination campaign and the forcible displacement of thousands more to desolate areas of Iraq to be genocide but no one seemed to listen or act to stop it.

Civilians in Kuwait were brutally treated when Iraq invaded in 1990, but the worst came when Kurds and southern Iraqi Shiites rose against Hussein during Operation Desert Storm. Hundreds of thousands died — there was rape, unspeakable torture, mass murder of children and women, and many mass graves — some eventually discovered, others still hidden.

The Saddam Hussein Black Book

Edited by Chris Kutschera

Oh! Editions

2005, 701 pages,

29.90 Euros.

The book claims that Saddam's 25-year reign claimed more than 2 million lives. Inside his regime he ruled like Stalin: Everyone in his elite was a potential victim and knew it. Outside, unlike Stalin, he didn't need Gulag slave labor in oil rich Iraq so he simply killed his adversaries. A section of the book discusses Saddam's international supporters, especially France and the Soviet Union. And characteristically, Arab regimes and intellectuals turned a blind eye to Saddam's excesses, just as they continue overlooking other Muslim-on-Muslim violence today.

In the three years since the Black Book's publication, the world has shown little interest in Saddam's crimes. Universities that offer courses on Abu Ghraib focus on admittedly contemptible — but comparatively insignificant — abuse by Americans rather than Saddam's secret police hell where thousands were tortured to death. In fact, when any notice is given crimes committed by non-Westerners the tendency is to blame the West: America is blamed for giving chemical weapons to Saddam; Israeli brutality causes Palestinian resistance; Belgian and British colonialisms created the brutality in Rwanda/Burundi and Darfur; the CIA created Osama bin Laden; worldwide Muslim riots were caused by Danish insensitivity to Mohammed; French racism was responsible for young Muslims' urban violence.

But, generally, western media simply ignore mass murders committed by governments that oppose America or Israel. Few people have read or heard that more than one million civilians were killed during the 1979-89 Soviet occupation of Afghanistan. No one really knows or cares how many Chinese died as a result of Mao Zedong's policies — 50 Million? 80? 100?

When was the last time you saw a report of the deaths in Sierra Leone, Angola, Uganda, and a dozen of other former colonies where the killing has gone on for decades? Do you know or care how many died in Stalin's gulags — 40 million? 60? 70? For that matter, at home, the "Iraq Body Count" website lists the number of civilian deaths after the U.S. invasion but gives no report on the number of Iraqis who died before 2003.

Le Livre noir is not available in English and probably never will be. The media and the public think we already know all that is worth knowing. We don't. CPR

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First Things

Primal divergence

by John Kurzweil

A reader objected mildly that my article "Arnold Schwarzenegger, reviving a classic film role" (*CPR*, Nov./Dec. 2007) abruptly changed subjects when it quit analyzing the governor's CRP Convention speech and Dan Weintraub's column about it to ask about the speech and column: "what makes a man write demonstrable drivel if it isn't a natural incapacity to make sense?"

I respectfully disagree with my reader that this represented a change of subjects. It is, rather, the introduction of the actual subject of the article, what went before being merely the stage setting. I could not very well accuse Mr. Weintraub of abandoning reason with no evidence to prove it. But what was I proving? Merely that his column, and the governor's position, make no sense? That is, of course, about as far as most political commentary usually goes. But my larger point was that something far more complex and insidious is afoot in my opponents' arguments: not an *inability* to make sense, but a willful choice precisely to talk both intellectual and moral nonsense. The explanation, I maintain — which is the overall point of this column — is that beginning half a millennium ago, we westerners began ignoring the First Things. That is, at precisely the time standard liberal myth says men finally began breaking free from centuries of irrationality to emerge into scientific Enlightenment, the reverse, in fact, actually occurred. It was at that point that men began to dilute their emphasis on the First Things (good, life, love, truth, and beauty — all emanating from *the* First Thing, God)) as the central concerns of their lives.

I recently ran across a good joke that well captures the liberal attitude about First Things: Sherlock Holmes and Dr. Watson go on a camping trip. After a good dinner and a bottle of wine, they retire for the night and go to sleep. Some hours later, Holmes wakes up and nudges his faithful friend.

"Watson, look up at the sky and tell me what you see."

"I see millions and millions of stars, Holmes," replies Watson.

"And what to you deduce from that?" Watson ponders for a minute.

"Well, astronomically, it tells me that there are millions of galaxies and potentially billions of planets. Astrologically, I observe that Saturn is in Leo. Horologically, I deduce that the time is approximately a quarter past three.

"Meteorologically, I suspect that we will have a beautiful day tomorrow. Theologically, I can see that God is all powerful and that we are a small and insignificant part of the universe. What does it tell you, Holmes?" Holmes is silent for a moment. "It tells me," he says finally, "that someone has stolen our tent!"

This story appeared in an article, the writer of which went on to draw from it the lesson that "We have been so mired in analytical dialectics and reasoning that we have neglected to see the obvious." As I say, the liberal attitude about the First Things: that they are high-flown, more or less unreal entities best left to ivory tower pointy-heads while we, being practical, focus on "the obvious." But "the obvious" can't explain why intelligent, influential, sometimes powerful people suddenly, like our governor, indulge moral and intellectual gibberish.

C.S. Lewis's devil Screwtape wrote of the time, ages past, when "men actually connected thinking with doing," acting in accord with a logical chain or reasoning, a time which, Screwtape happily noted, is long gone. This is the argument at the heart of all our politics. The conservative position is that we start, reasonably enough, with the First Things, and set our course as best we can by them; the anti-civilizational position is that our sole guide is the expediency of the moment, the First Things being just so many myths. From this primal divergence come all the disagreements separating conservatives from the left. CPR

John Kurzweil is CPR's *editor.*

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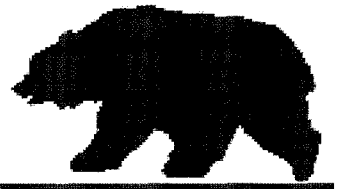

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